

VILLAGE OF GOSHEN, NEW YORK:

ZONING BOARD OF APPEALS

-----X

In The Matter Of:

JEFFREY SHERWIN, Applicant

To Consider an Appeal from the  
Village Building Inspector's Determination  
Affecting Premises Section 104, Block 1, Lot 2.

-----X

November 21, 2013

276 Main Street

Goshen, New York

7:30 p.m.

BEFORE:

WAYNE STAHLMANN, Chairman

NEIL FRISHBERG

JOHN STROBL

GAR CLARK

LYNN CIONE

ALSO PRESENT:

JAMES G. SWEENEY, ESQ.

TAYLOR M. PALMER, ESQ.

GREGORY G. HOOVER, ESQ.

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MR. STAHLMANN: Thank you all for coming. We are going to pick up where we left off. So, the first thing we are going to do is the C.H. Development and finish that up.

So, this is the application of Jeffrey Sherwin. Property in question - McNally Street, tax lot 104-1-1.2.

Let's do it this way - I am going to open the floor up to both of you gentleman, and maybe I am going to let you start, Mr. Sweeney. I know we have Mr. Nuzzolese here, I want to get him in but I will let you start.

MR. SWEENEY: I will try to be brief. What I tried to do is articulate my legal position and my client's legal position in a letter, a rather lengthy letter, that I sent to you and you have had before that your counsel's correspondence in that respect, and I tried to lay out what I think are the essential items that you have to decide tonight - or whenever you do decide - and what I am going to do is I tried to really boil it down - and lawyers have a hard time doing this - boil it down to three or four questions that you got to look at and answer one way or the other and this is kind of

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in the way of a jury verdict, a sheet, and it helps focus everybody on what I think are the important issues. I want to read them for you and then I will step back because I think it encapsulates everything and you have to decide these questions, there are four questions. You have to decide all of these questions in the affirmative if you are going to affirm the builder inspector's determination of October 2nd that New McNally Street is by way of prescription or public use over ten years a public street and warrant the issuance of the building permit that is issued. And what I've done is try to summarize this in what I said, and I said that the first: You must find that New McNally Street has been used by the general public and not just the invitees of the abutting owners, the school and the Farley's, and it has been used as a public street for ten years, yes or no; and only if you answer question number one in the affirmative you must then find that the public use and the village's maintenance of that street was adverse or hostile to the interest of the real owner of the street, the village, and not with its consent or acquiescence, yes or no. And only if

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the answers to the first two questions that I pose are in the affirmative then you must find that the lot in question has actual frontage on New McNally Street, yes or no. Those to me distill the essential questions that are before you.

If we are to proceed as the building inspector has proposed that this is a street by prescription, public use, you must make those determinations. If the street has not been used by the public, the general public, everybody, as a public street for over ten years, then that fails and if that fails the whole house of cards fails. If you decide that it has been used by the public for ten years, then you must decide whether or not it has been used in a way that is hostile, adverse, to the interest of the owner. Remember that the owner is the village. Has the use by the general public - if you so decide that way - been adverse to the interests of the village? And, very important, has the maintenance or dominion - as we call it as lawyers - over that street been adverse to the public or has it been by its acquiescence? And I am going to suggest to you that those are impossible answers, they are both by the acquiescence of the village.

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1  
2 And lastly - and you must look at the diagram I  
3 submitted to you which is based on the survey which  
4 was submitted in support of the application - does  
5 this street, McNally Street, have actual - and I  
6 mean actual, touch by touch - frontage on McNally  
7 street. If it does not, the permit cannot be  
8 issued. That's the law.

9 So, those are the issues that you have to  
10 decide - one, two, three, four.

11 MR. FRISHBERG: Your issue number three,  
12 adverse use or adverse maintenance.

13 MR. SWEENEY: Maintenance.

14 MR. FRISHBERG: That is with your position  
15 that this is an easement by prescription and we  
16 have to apply the easement by prescription factors,  
17 correct?

18 MR. SWEENEY: Yes.

19 MR. FRISHBERG: And that is not in the statute  
20 and that argument is on what you want us to look  
21 at, you want us to look at the title of the statute  
22 and because the easement by prescription factors  
23 are in the statute but it does say use of  
24 prescriptive easement is in the title of the statute  
25 and that you argue that you should use the easement

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1  
2 by prescription factors. Am I wrong? If I am  
3 wrong, tell me.

4 MR. SWEENEY: well, I disagree what I think  
5 you are leading to. The title of the section in  
6 the statute is use by prescription. A prescriptive  
7 use includes two elements - one, use by the public  
8 for a define period of time, here in New York it is  
9 ten years; and secondly, dominion or maintenance by  
10 the municipality for the same number of years.  
11 That's the essence of prescription and prescription  
12 is part in parcel of the statute, it is in the  
13 statute. I tried to explain that in my --

14 MR. FRISHBERG: No, I read your papers.

15 MR. SWEENEY: So, you need the two elements to  
16 be successfully answered.

17 MR. PALMER: If I may - I do have a copy of  
18 the statute streets by prescription if you would  
19 like me to read it into the record.

20 MR. STAHLMANN: We have gone through it but it  
21 would not hurt to read it into the record.

22 MR. PALMER: The actual definition is Streets  
23 by Prescription and it is Section 6-626, it is,  
24 "All lands within the Village which have been used  
25 by the public as a street for ten years or more

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continuously shall be a street with the same force and effect as if it has been duly laid out and recorded as such."

MR. FRISHBERG: I guess that is what I am having trouble wrapping my arms around here, Mr. Sweeney, is that if this statute is clear on its face why do you want us to add something to it?

MR. SWEENEY: I am not asking you to add anything to it.

MR. FRISHBERG: Or are you saying we are not adding something to it, this is your interpretation of the statute and the Court's interpretation of it?

MR. SWEENEY: Not one court, but courts all across this nation have defined prescription in two aspects, prescription as to a street.

MR. FRISHBERG: Oh, no, I don't dispute that. I totally agree with your definition of easement by prescription. But what I am having trouble wrapping my arms around is how do you get from this statute to easement by prescription?

MR. SWEENEY: Because it is in the title, prescription. It is part and parcel of the statute.

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MR. FRISHBERG: Okay. So then we go back to the title argument which is -- would you site statutes 13, as I recall, and 134?

MR. SWEENEY: That is the interpretative statute, yeah.

MR. FRISHBERG: 13 and I think you said 134, Footnote 38.

MR. SWEENEY: Well, I am not sure what I said, it is in my correspondence.

MR. FRISHBERG: I did read your papers.

MR. SWEENEY: But under any circumstance, you must have prescriptive use, which is adverse use, for at least ten years by at least the general public.

So, those are the questions I think you will have to answer every one of those four questions in the affirmative. If any one is answered in the negative I think the building inspector's interpretation fails. That is it. I don't need to say anymore.

MR. STAHLMANN: Thank you. Mr. Hoover?

MR. HOOVER: I believe I said everything I needed to say last time.

MR. STAHLMANN: Okay. We have Mr. Nuzzolese

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here, thank you again for coming. The Board asked you to come here today. For the record, tell us who you are?

MR. NUZZOLESE: My name is Michael Nuzzolese, I am Superintendent of Public Works for the Village of Goshen.

MR. STAHLMANN: One of the things the Board wanted to know about was how has this street been treated over the years? For instance, do you plow it?

MR. NUZZOLESE: Yes.

MR. STAHLMANN: How is it paved?

MR. NUZZOLESE: It is blacktop pavement and it has been microsealed since I have been the superintendent.

MR. STAHLMANN: By the village?

MR. NUZZOLESE: Yes.

MR. STAHLMANN: And I guess lines are drawn?

MR. NUZZOLESE: Yes.

MR. STAHLMANN: Because I know there's now --

MR. NUZZOLESE: Double yellow.

MR. STAHLMANN: -- a double line down the middle?

MR. NUZZOLESE: Yeah.

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1  
2 MR. STAHLMANN: And, again, that was drawn by  
3 the village?

4 MR. NUZZOLESE: Yes.

5 MR. FRISHBERG: So, the Goshen School District  
6 does not plow that street?

7 MR. NUZZOLESE: It is a little bit of a  
8 peculiar thing, we plow and we go through but we  
9 end up going through their parking lot to get to  
10 the section on the other side.

11 MR. STAHLMANN: But basically it is the  
12 village plows that do the job?

13 MR. NUZZOLESE: Yes.

14 MR. FRISHBERG: When the street needs  
15 maintenance who maintains the street?

16 MR. NUZZOLESE: Our section we do, the village  
17 does.

18 MR. STAHLMANN: I don't know if this is an  
19 appropriate question to ask you, I guess we all  
20 have our own anecdotal evidence - the street  
21 itself, is it a street where people come and go on  
22 based on your experience?

23 MR. NUZZOLESE: I believe there's  
24 through-traffic, yes. I know we use it and our  
25 garbage truck uses it.

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1  
2 MR. FRISHBERG: Have you observed traffic on  
3 the street?

4 MR. NUZZOLESE: Yes.

5 MR. FRISHBERG: Have you observed any people  
6 walking on the street?

7 MR. NUZZOLESE: Yes.

8 MR. STAHLMANN: And you said the Village  
9 garbage trucks come up that portion of McNally?

10 MR. NUZZOLESE: Yes.

11 MR. STAHLMANN: Pass through the school  
12 parking lot to service --

13 MR. NUZZOLESE: To go down, to go around the  
14 loop, this way they don't have to turn around and  
15 go back all the way around.

16 MR. STAHLMANN: Thank you. Folks, Questions?

17 MR. CLARK: Has it been ten years though,  
18 Mike, are you sure?

19 MR. NUZZOLESE: Oh, yes. Actually, God bless  
20 his soul, when John Egbertson was alive we went up,  
21 he had us actually -- there was a controversy with  
22 the house, as you turn up the house to the right  
23 the driveway is up there and that's when it was  
24 decided it was going to be two-way.

25 MR. STAHLMANN: Right. Because it used to be

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a one-way?

MR. NUZZOLESE: Right. Exactly.

MR. FRISHBERG: What's the history of this McNally Street? Can you provide us a little background? How long has it been around? When was it formed? Why was it formed?

MR. NUZZOLESE: I've been here since 1979 and it was there then.

MR. FRISHBERG: It was there since '79?

MR. NUZZOLESE: Yeah.

MR. STAHLMANN: I am trying to recall because I know when I sat here probably about eleven years ago I think the Farley house was there then, is that correct?

MR. NUZZOLESE: Yes. That is the house on the right?

MR. STAHLMANN: The house with the driveway.

MR. NUZZOLESE: Yes, yes.

MR. STAHLMANN: And it was at that point I guess that the one-way didn't make any sense anymore?

MR. NUZZOLESE: Yeah. It was actually Charlie and Kim VanHaaster who lived there at the time.

MR. STROBL: They bought it in 1998. The

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other people bought it in September of 2007.

MR. FRISHBERG: If I can ask - I think in all fairness I think we should give Mr. Sweeney to ask any questions, as well as Mr. Hoover?

MR. STAHLMANN: Yes. That is where we are going.

MR. SWEENEY: All right. How long have you maintained the street?

MR. NUZZOLESE: I've been the superintendent since 1995.

MR. SWEENEY: What is the degree of your maintenance, explain what you do?

MR. NUZZOLESE: Salting, plowing, painting the yellow lines, patching if it needs it.

MR. SWEENEY: And there was once upon a time a one-way sign, was there not?

MR. NUZZOLESE: Yes.

MR. SWEENEY: How did that disappear?

MR. NUZZOLESE: Chief John Egbertson wanted it removed.

MR. SWEENEY: Was that at the direction of the Village Board?

MR. NUZZOLESE: I don't know.

MR. SWEENEY: When you plow the street where

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do you stop?

MR. NUZZOLESE: We go all the way up and through.

MR. SWEENEY: Through what?

MR. NUZZOLESE: Through the parking lot and out the other end.

MR. SWEENEY: Do you have the permission of the School Board to do that?

MR. NUZZOLESE: They -- no, I don't know.

MR. SWEENEY: You don't know?

MR. NUZZOLESE: We always have. We have a good working relationship with the school district, Jim Riley is the Superintendent of Grounds.

MR. SWEENEY: Has he ever given you the permission to move into his parking lot?

MR. NUZZOLESE: Never asked.

MR. SWEENEY: Never asked. Okay. What about the sidewalk, when was that placed?

MR. NUZZOLESE: I would say five or six years ago.

MR. SWEENEY: Who did that?

MR. NUZZOLESE: The Village of Goshen and the school district, it was a joint project.

MR. SWEENEY: About five or six years ago?

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MR. NUZZOLESE: I would say so.

MR. SWEENEY: So, it is not within ten years?

MR. NUZZOLESE: I don't believe it is ten years.

MR. SWEENEY: All right. I have no further questions.

MR. STAHLMAN: Mr. Hoover, anything?

MR. HOOVER: Just one follow-up. Did the Superintendent of the Buildings and Grounds of the school district ever suggest to you that you not go through there with your plows?

MR. NUZZOLESE: Not at all. Let me explain what happens too is, you know, if they are out first they go up through and if we go out first we go up through because we don't raise the plow halfway up the street.

MR. FRISHBERG: Let me ask you this - when it snows does there ever come a time when the Goshen School District plows McNally Street?

MR. NUZZOLESE: Yeah, because they don't raise -- when they get to the end of the parking lot they don't raise their plow.

MR. FRISHBERG: So, sometimes the Village does it and sometimes the elementary school does it?

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1  
2 MR. NUZZOLESE: Most of the time the village  
3 does it because we are out in the middle of the  
4 night but, you know, if they are cleaning up during  
5 the day they will, you know, because they wouldn't  
6 stop, they would leave a pile of snow in the middle  
7 of our street if they did.

8 MR. STAHLMANN: Where do they push the snow  
9 to?

10 MR. NUZZOLESE: They just plow through to the  
11 intersection and turn around and come up.

12 MR. STAHLMANN: The intersection of Murray?

13 MR. NUZZOLESE: Murray, yeah.

14 MR. FRISHBERG: So, they just leave all of the  
15 snow on the corner of McNally and Murray?

16 MR. NUZZOLESE: Well, you square up the  
17 intersection, yeah, you know.

18 MR. SWEENEY: Can I ask one more question?  
19 Let me try to sum it up.

20 So, the school district, there are times the  
21 school district actually plows the road?

22 MR. NUZZOLESE: Yes, if they are there before  
23 us, yes.

24 MR. SWEENEY: How often does that occur?

25 MR. NUZZOLESE: Not too often because we are

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out all the time in the middle of the night.

MR. SWEENEY: But it does occur?

MR. NUZZOLESE: It has happened, yes.

MR. SWEENEY: That's all.

MR. FRISHBERG: Has the school district ever maintained the road?

MR. NUZZOLESE: No, not our section.

MR. FRISHBERG: McNally Street, have they ever tarred it?

MR. NUZZOLESE: No.

MS. CIONE: There's other streets in the village like Kelsey Lane and Butler?

MR. NUZZOLESE: Yup.

MS. CIONE: Do you plow them, maintain them?

MR. NUZZOLESE: No. They are private.

MR. STAHLMANN: That long street that runs to the back of the high school --

MR. NUZZOLESE: Past the bus garage?

MR. STAHLMANN: Yes. Who maintains that street?

MR. NUZZOLESE: The school district.

MR. STAHLMANN: They plow that?

MR. NUZZOLESE: Yes.

MR. SWEENEY: Can I ask one more question, and

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I really apologize - last one.

You testified that you had observed people using the street, what do you base it on? Do you sit up there and watch?

MR. NUZZOLESE: No.

MR. SWEENEY: What do you base that statement on?

MR. NUZZOLESE: I know most everybody lives in the Village and I've seen Mrs. Antellino go by and wave to her.

MR. SWEENEY: So, you've seen one person go by?

MR. NUZZOLESE: No.

MR. SWEENEY: How many?

MR. NUZZOLESE: I don't know.

MR. SWEENEY: You don't know? Is it the same as West Main Street?

MR. NUZZOLESE: Not at all.

MR. SWEENEY: Okay. Thank you.

MR. STAHLMANN: Anybody else? Mr. Hoover? Do you want the last word?

MR. HOOVER: No.

MR. STROBL: Can I just ask you a question?

MR. NUZZOLESE: Sure.

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1  
2 MR. STROBL: I just want to make sure I am not  
3 confused on this because we did have a lawsuit, you  
4 know, ten, twelve years ago. So, I am looking at  
5 the thing in the school, looks like it was built in  
6 1967 or at least it says in the front and obviously  
7 we lost a lawsuit that went one way and we are  
8 looking at something similar again. My question is  
9 is when we are maintaining it in 1967, 1975, the  
10 time that they make that original decision one way  
11 or another by the judge, it wasn't like you started  
12 plowing the road after we lost the decision in the  
13 village. So, I am trying to understand what makes  
14 this different now maintaining it in the 60s, 70s,  
15 80s and 90s --

16 MR. STAHLMANN: I don't think it was the issue  
17 of that lawsuit.

18 MR. STROBL: Yeah, but I am saying, you know,  
19 I am not sure what has changed now, I mean, you  
20 were plowing it then. It wasn't like you just  
21 started plowing in the 90s, you were plowing in the  
22 80s, right?

23 MR. NUZZOLESE: I was just talking from when I  
24 got my promotion but like from 1979 I drove the  
25 salt truck and plow truck and we always salted.

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1  
2 So, you don't just shut it off in the middle, you  
3 just keep the salter going but there's always been  
4 a relationship, if you would, you know, with the  
5 school district back and forth because it is kind  
6 of a peculiar type of thing because you are on our  
7 street and then you are in the parking lot and then  
8 on our street, so.

9 MR. STROBL: Do you know anything about how  
10 the driveway -- I mean, I've heard of things about  
11 the other driveway onto that road, do you have  
12 any --

13 MR. NUZZOLESE: Say that again?

14 MR. STROBL: The one road right there where  
15 you go up the so-called 'New McNally' there's that  
16 house that has the driveway which is facing Murray  
17 and the driveway comes off of so-called 'New  
18 McNally'.

19 MR. NUZZOLESE: Yup.

20 MR. STROBL: My understanding is that that  
21 thing got put in when before Harness Estates went  
22 in, it was a temporary and that was supposed to be  
23 moved.

24 MR. NUZZOLESE: I don't know about that but --

25 MR. STROBL: It was a temporary --

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MR. NUZZOLESE: I don't know about that but I remember along --

MR. STROBL: -- because it faces Murray and the road comes out onto New McNally Street which, you know, this is before Harness Estates, which that wasn't supposed to last forever, right?

MR. NUZZOLESE: Joe lived there a long time ago, yup.

MR. STROBL: Because the painted line went in like the last year and a half?

MR. NUZZOLESE: Oh, yeah. Maybe like two summers ago.

MR. STROBL: Because I got it like two years ago where I got it off of Google where you see the line and decided the last two years -- I mean, I went up there tonight and the car blew right through the parking lot going the wrong way. There are people walking up there and everything and he just blew right through the 'don't go this way', you are supposed to go around the back of the school, he just flew right straight through the parking lot when I was up there at 5:00.

MR. NUZZOLESE: He went from McNally down to Murray?

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1  
2 MR. STROBL: Yes, at 5:00. Flew right through  
3 there straight. So, I mean, I am just trying to  
4 see that, you know, what has changed if we have a  
5 decision, you know, ten, twelve years ago we were  
6 maintaining it the same way before that.

7 MR. NUZZOLESE: Right. The only thing that is  
8 different is when they got a new principal up there  
9 for the bus traffic to try to keep the people from  
10 dropping their kids off, that's why we asked for  
11 the double yellow line, which myself and Jimmy Watt  
12 went up there and that made perfect sense to do.

13 MR. STAHLMANN: So, the double yellow line to  
14 keep the buses on the right side of the street?

15 MR. NUZZOLESE: Yeah. What they want to do is  
16 have the parents come up and, if you would, if you  
17 are coming up McNally come up the short piece, take  
18 the left and circle around and then go back out,  
19 instead of doing what you just described because  
20 that's what was happening, some people were coming  
21 one way and some people were coming the other way  
22 and then they were, you know, closing the buses.

23 MR. STROBL: How do I know that road is  
24 pitched the right way? Like Butler down in the  
25 Paddock, that was a private road and I think it

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1  
2 still is but one of the reasons was it didn't have  
3 the right pitch, it wasn't built the right way  
4 because of the drainage. Now, how do I -- I mean,  
5 are we supposed to adopt the road that I don't know  
6 has the right pitch or not just because we use it?

7 MR. NUZZOLESE: Well, our section is 30 feet  
8 and if the crown is in the middle on our section  
9 where you go up and starts to curve to the left,  
10 that's where you start to see where it closes in  
11 and gets skinny, but the section that belongs to  
12 the village is 30 feet.

13 MR. STROBL: That would be to the  
14 specifications of the village to approve the way  
15 things are pitched and everything else?

16 MR. NUZZOLESE: Right.

17 MR. STAHLMANN: Mr. Sherwin, I see your hand  
18 is up?

19 MR. SHERWIN: I have a couple of questions for  
20 Mr. Nuzzolese. Mr. Nuzzolese, you said that Chief  
21 Egbertson --

22 MR. NUZZOLESE: John Egbertson, yes.

23 MR. SHERWIN: John Egbertson, that he took  
24 down the one-way sign?

25 MR. NUZZOLESE: Yes.

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1  
2 MR. SHERWIN: Do you know if that was at the  
3 direction of the Village Board?

4 MR. NUZZOLESE: No, I don't.

5 MR. SHERWIN: Do you know whether or not the  
6 Village Board had ever passed a resolution changing  
7 New McNally Street from a one-way street to a  
8 two-way street?

9 MR. NUZZOLESE: Not to my knowledge.

10 MR. SHERWIN: As far as you know it is still a  
11 one-way street?

12 MR. NUZZOLESE: No, it is a two-way street.

13 MR. SHERWIN: When was the resolution passed?

14 MR. NUZZOLESE: I don't know nothing. I just  
15 met the police chief up there and he asked for the  
16 sign to be taken down.

17 MR. SHERWIN: When was that?

18 MR. NUZZOLESE: When did he die, do you know?

19 MS. CIONE: I think 1999, maybe 2000.

20 MR. NUZZOLESE: Yeah, it was before that. It  
21 was still when the VanHaaster's had lived up there,  
22 whenever that was.

23 MR. STAHLMANN: You think it was before 1999?

24 MS. CIONE: He passed away in '99.

25 MR. NUZZOLESE: It had to be, sure.

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1  
2 MR. STAHLMAN: Do you remember it being Chief  
3 Egbertson?

4 MR. NUZZOLESE: Oh, yeah.

5 MR. SHERWIN: The double yellow line up there,  
6 do you know how long it is?

7 MR. NUZZOLESE: No.

8 MR. SHERWIN: If I told you it was only 65  
9 feet, would that sound about right to you?

10 MR. NUZZOLESE: I wouldn't shoot from the hip,  
11 I would have to go up and measure it.

12 MR. SHERWIN: If I could, I would like to show  
13 you something I measured and see if this will help  
14 you a little bit. It is a little diagram and  
15 that's the double yellow line (indicating).

16 MR. NUZZOLESE: Okay.

17 MR. SHERWIN: This is the curb cock for the  
18 house on the right (indicating).

19 MR. NUZZOLESE: Okay.

20 MR. SHERWIN: So, if you see, it does not  
21 start at the intersection of Murray Avenue and New  
22 McNally Street, does it?

23 MR. NUZZOLESE: We never go all the way down  
24 because the traffic would cross it.

25 MR. SHERWIN: And it only runs approximately

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65 feet, if that looks about right?

MR. NUZZOLESE: Yeah.

MR. SHERWIN: And then there's another approximate 67 feet up to the curb cock to the house on the right, so, it is a very limited double yellow line?

MR. NUZZOLESE: Yeah.

MR. SHERWIN: Why did you make it only 65 feet?

MR. NUZZOLESE: Because that's what Chief Watt wanted.

MR. SHERWIN: So, it is 67 feet before you reach the house, the driveway on the right?

MR. NUZZOLESE: I would have to go measure it.

MR. SHERWIN: But that sounds about right to you?

MR. NUZZOLESE: Yeah.

MR. STAHLMANN: Mr. Sherwin, do you want to share with us?

MR. SHERWIN: Sure. I will be happy to share with you.

MR. SWEENEY: Let's mark it as an exhibit, Appellant's Exhibit 6.

(Whereupon, Appellant's Exhibit 6, a diagram,

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was marked for identification.)

MR. STROBL: You know, that's very weird - let me just say one thing for you - I was just up there at 5:00 and where that is a two-way road at the bottom and at the top of the school technically you can't go down that thing because you can't exit that way, so, if you get that in there because I even took a photo of it. So, I mean, you can't go down that way from the school, you can't enter there.

MR. FRISHBERG: The idea is from the school parking lot you can't make a right turn onto McNally Street, can you?

MR. NUZZOLESE: Correct.

MR. FRISHBERG: But if you were a driveway though, if you had a driveway on it in theory you can make a right turn?

MR. SHERWIN: I don't think you can, I think it is a one-way street, I think that is what the Village resolution says and it has never been changed from a one-way street to a two-way street. My understanding of the law - and you can ask your counsel - unless there's a resolution by the Village Board of Trustees it is a one-way street.

- PROCEEDINGS -

MR. STAHLMANN: Hold on a second. Mike has been very generous with his time with us. Let us first focus on any other questions we have for Mike and then I am going to open up the floor up to you.

MR. SHERWIN: Can I just ask him a couple more questions about the diagram? It is has been marked Exhibit 6 and does the diagram look approximately correct as to where things are located from memory?

MR. NUZZOLESE: Sure, from memory.

MR. SHERWIN: From memory, from the curb cock to the house on the right and then the curb cock is --

MR. NUZZOLESE: Is up above the storm drain.

MR. SHERWIN: Yeah, up above the storm drain up there?

MR. NUZZOLESE: Yeah.

MR. SHERWIN: So, it is a very limited double yellow line, correct?

MR. NUZZOLESE: Yes.

MR. SHERWIN: So, are you saying that the village part of the street runs up to the school property line?

MR. NUZZOLESE: It runs approximately -- you will see where there's a chain-link fence that

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comes down the right side, right where that chain-link fence ends was the approximate line.

MR. SHERWIN: If I gave you a red pen can you draw on this diagram?

MR. NUZZOLESE: It would be approximate from memory.

MR. SHERWIN: Just as best you could where you think the school property begins.

MR. NUZZOLESE: (Whereupon, Mr. Nuzzolese marks the diagram.)

MR. FRISHBERG: Mr. Sherwin, I was going to say, could you use the document you gave us?

MR. SHERWIN: I understand that, but I am asking him what his understanding is. And could you put your initials on the line?

MR. NUZZOLESE: (Whereupon, Mr. Nuzzolese initials diagram.)

MR. SHERWIN: So, your understanding is this is the approximate area of where the --

MR. NUZZOLESE: Yeah. If you go up there you will see a chain-link fence that belongs to the school.

MR. SHERWIN: Okay. So, you are saying that the street up to the school line is approximately

- PROCEEDINGS -

30 feet in width?

MR. NUZZOLESE: Right.

MR. SHERWIN: But after that it narrows down dramatically, right?

MR. NUZZOLESE: Yes.

MR. SHERWIN: And up by the school it is about 20 feet, is that right?

MR. NUZZOLESE: This is 30 feet -- oh, by the school? I don't know. Right where the crosswalk is, thereabouts, yeah.

MR. SHERWIN: 20 feet?

MR. NUZZOLESE: Yeah.

MR. SHERWIN: So, the part of this area that you are saying you take care of is up to the school property line?

MR. NUZZOLESE: Yes.

MR. SHERWIN: Where you put your initials?

MR. NUZZOLESE: Yes.

MR. SHERWIN: Then the school takes care of the rest of it?

MR. NUZZOLESE: Yes.

MR. SHERWIN: So, everything above that where your initials are --

MR. NUZZOLESE: Let me explain another thing

- PROCEEDINGS -

1  
2 about the double yellow line too is that with the  
3 addition of Harness Estates, that intersection --  
4 to defend Jimmy Watt, like he was trying to keep  
5 people entering the intersection the proper way.  
6 For years there wasn't people coming out of that  
7 subdivision, so, it did not matter how they went,  
8 so, that double yellow line was kind of like people  
9 were just going up like too wide there.

10 MR. STAHLMAN: So, you are saying people were  
11 coming out of Harness Estates making a right --

12 MR. NUZZOLESE: Well, if they did but when  
13 they were coming out people were so accustomed, you  
14 know, it became a 'T' intersection instead of a  
15 left-hand turn. So, that kind of addressed that  
16 safety issue when people were exiting Harness.

17 MR. SHERWIN: One other question is in the  
18 morning, have you ever been up there in the morning  
19 when the school buses were there?

20 MR. NUZZOLESE: I try to avoid it.

21 MR. SHERWIN: Have you ever been there?

22 MR. NUZZOLESE: Yeah.

23 MR. SHERWIN: Have you ever seen the school  
24 buses block the entire street going up?

25 MR. NUZZOLESE: Yeah.

- PROCEEDINGS -

MR. SHERWIN: Because they angle --

MR. NUZZOLESE: Well, that's the reason for the double yellow line.

MR. SHERWIN: They still do it, don't they?

MR. NUZZOLESE: Yeah.

MR. SHERWIN: Okay. No further questions with regard to the diagram.

MR. STAHLMANN: Anything else for Mr. Nuzzolese?

MR. FRISHBERG: Part of it is a statement, part of it is a question for Mike. Mike, I took the C.H. Development Survey and Site Plan and I started to scale 65 feet and I am not quite sure, does that 65 feet ends at the bend?

MR. NUZZOLESE: Approximately, yes.

MR. FRISHBERG: At the bend of it?

MR. NUZZOLESE: Yeah.

MR. FRISHBERG: Okay. That is right. That's about right then. That's what I get when I scale it, because that's what I was trying -- because the street is at least 260 from what I can tell, is the street about 260 feet?

MR. NUZZOLESE: I would have to measure it.

MR. FRISHBERG: Okay. All right. But the

- PROCEEDINGS -

lawn is --

MR. NUZZOLESE: I would say it is approximately, sure.

MR. FRISHBERG: Thank you.

MR. STAHLMANN: Anything else for Mr. Nuzzolese?

MR. SWEENEY: One last question, maybe two. You are aware of the 'Do Not Enter' sign at the school district property at the --

MR. NUZZOLESE: Other side.

MR. SWEENEY: On the other side, you are aware of that?

MR. NUZZOLESE: That's on the end of our street.

MR. SWEENEY: You are aware of it?

MR. NUZZOLESE: Yes.

MR. SWEENEY: That means do not enter outbound to Murray, is that correct?

MR. NUZZOLESE: My take on it is do not enter the parking lot that way. That was the intent of that sign, that sign is on the end of the village street.

MR. SWEENEY: Let's take a look at Exhibit 5. I diagramed a 'Do Not Enter' sign at that point, is

- PROCEEDINGS -

that correct?

MR. NUZZOLESE: Give me a minute.

MR. SWEENEY: It is the street coming in.

MR. NUZZOLESE: But where are we coming?

MR. SWEENEY: Murray coming up and in.

MR. NUZZOLESE: Oh. Okay. Yup, okay.

MR. SWEENEY: You are aware of that 'Do Not Enter' sign?

MR. NUZZOLESE: No, it is on the other side.

MR. SWEENEY: There is two, are you aware of that one?

MR. NUZZOLESE: That's the one I thought you were talking about.

MR. SWEENEY: No, I am talking about the one that's closer to the village property.

MR. NUZZOLESE: No, from memory I don't remember.

MR. SWEENEY: You don't remember it?

MR. NUZZOLESE: No.

MR. SWEENEY: You don't know it is there?

MR. NUZZOLESE: I just don't remember it.

MR. SWEENEY: It is there.

MR. STROBL: Mr. Sweeney, do you want a photo of it?

- PROCEEDINGS -

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MR. SWEENEY: So, you are aware of it?

MR. STROBL: I went at 5:00 and took a picture of it.

MR. SWEENEY: So, it is there?

MR. STROBL: Yes, sir.

MR. SWEENEY: Then I am going to ask him a rhetorical question - how can a street be a two-way street when it is one-way coming out of the school district's parking lot?

MR. FRISHBERG: Well, it is an odd street.

MR. SWEENEY: Have you ever seen a street that is halfway two-way and halfway one-way? I haven't.

MR. HOOVER: Does anybody know who put that sign in 'Do Not Enter'? Was it the school district, was it the Village?

MS. CIONE: It has always been there.

MR. HOOVER: I don't care if it has always been there, somebody put it there, it didn't grow there.

MR. NUZZOLESE: I can't answer that. It hasn't been put up since I have been in charge.

MR. FRISHBERG: When it comes to putting stuff up do you take your directions from the chief of police?

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1  
2 MR. NUZZOLESE: I never, never, never put up a  
3 sign without checking with the chief of police.  
4 Any additional signs, I replace signs, but I never  
5 put up a new sign.

6 MR. FRISHBERG: So, the chief of police is the  
7 person who gives you direction?

8 MR. SWEENEY: How about the Village Board, do  
9 you check with them?

10 MR. NUZZOLESE: No.

11 MR. SWEENEY: No? It is a Village street, you  
12 don't check with them?

13 MR. STROBL: But that sign is on private  
14 property.

15 MR. HOOVER: Objection. Asked and answered.

16 MR. STAHLMANN: Any other questions? Anything  
17 else?

18 MR. FRISHBERG: No, nothing further.

19 MR. HOOVER: Well, does anybody know who put  
20 the sign up?

21 MR. STAHLMANN: Well, let's finish with Mike.

22 MR. PALMER: Mr. Chairman, if I may?

23 MR. STAHLMANN: Please.

24 MR. PALMER: And you did indicate that there  
25 are sidewalks that are on and along McNally Street

- PROCEEDINGS -

there?

MR. NUZZOLESE: Yes.

MR. PALMER: And in addition to the sidewalks I noticed there was a drain that go along the street there?

MR. NUZZOLESE: On the left-hand side going up.

MR. PALMER: Right. And was that installed by the village, do we know?

MR. NUZZOLESE: I think it was installed when the street was constructed.

MR. PALMER: Okay. And as far as you are concerned, again, you have witnessed passersby and you witnessed through-traffic?

MR. NUZZOLESE: Yes.

MR. PALMER: The Village has microsealed the road?

MR. NUZZOLESE: Yes.

MR. PALMER: And it would be evidence that the village has assumed control of this village road?

MR. NUZZOLESE: That section.

MR. PALMER: That section of the village road?

MR. NUZZOLESE: There are two sections, on the bottom and on the top.

## - PROCEEDINGS -

1  
2 MR. PALMER: So, there's been use for more  
3 than ten years, public use by more than ten years?

4 MR. NUZZOLESE: Yes.

5 MR. PALMER: And it has been assumed by the  
6 village to maintain that section of the village  
7 road?

8 MR. NUZZOLESE: Yes.

9 MR. PALMER: All right. Thank you, Mr.  
10 Nuzzolese.

11 MR. STAHLMANN: Mike, thank you very much. We  
12 appreciate your coming. Thank you.

13 I am going to open up the floor for anyone who  
14 has any final comments. Anybody in the public that  
15 has anything to add? Anybody who wants to make a  
16 point? Sir, please, tell us who you are.

17 MR. PETRAGLIA: My name is Nick Petraglia. I  
18 live in the Village on Murray Avenue, 185 Murray  
19 Avenue. I cannot understand how we have a street  
20 in this Village that is two-ways part of the way  
21 and one-way the other part of the way. Something  
22 is wrong and I don't believe the accidents that  
23 could happen there as a consequence of that weird  
24 kind of traffic control. I think we should  
25 straighten that out. If we are going to let that

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1  
2 be a public street it should be two-way all the way  
3 or one-way all the way. I hate to think of the  
4 consequences of letting it persist in its present  
5 structure.

6 MR. STAHLMANN: Thank you, sir. Okay. Let me  
7 go around the horn. Lynn?

8 MS. CIONE: Well, at the risk of possibly -- I  
9 don't know what the risk would possibly be called.  
10 As a witness I was on the Village Board and I think  
11 part of the reason was that that one-way street  
12 became a two-way was because of the driveway that  
13 was there because there's a driveway that jets out  
14 into that street, so, there would be no way for  
15 them to get out of that street, they would've had  
16 to go back into the parking lot of the school. So,  
17 if my memory serves me correctly I think that may  
18 be the justification for that because that was the  
19 only house that was there for a very long time  
20 prior to Harness being built. But other than that,  
21 I don't have any other questions, except that I use  
22 that street all the time, so.

23 MR. CLARK: Like I said last week, Mr. Sweeney  
24 has made a good case, but I can't see how we can  
25 overrule it or to prove it, I believe, that it has

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1  
2 been in existence for more than ten years and used  
3 by the public.

4 MR. STAHLMANN: Okay. John?

5 MR. STROBL: I get this juggling ball kind of  
6 like I mouthed off last meeting about, you know.  
7 The interesting thing is you have a private piece  
8 of property in between the road and that's making  
9 it difficult in between it being two-ways. I still  
10 have a question about the one on the corner of  
11 McNally Street where Harness goes in because I did  
12 talk to a lawyer that was on that case and he told  
13 me it was a temporary driveway before Harness went  
14 in, and we do that in some of those streets in  
15 Goshen. I think there is one up near the Hooker  
16 School behind where those four or five buildings  
17 are back there, I don't think that road is an  
18 official road and we have houses in there. So, it  
19 seems like we do that so the builders can proceed  
20 and I understand some of that but I am getting that  
21 this one possibly was a temporary until Harness got  
22 built and if we are doing that I don't see how we  
23 follow that up and that's part of our problem.  
24 Like last meeting when we were talking I said I  
25 pretty much consider that road like the road to the

- PROCEEDINGS -

1 high school and it is maintained by the school and  
2 there were no driveways on it. Well, we do have a  
3 driveway on this one, I am not sure it is legal, I  
4 mean, it is not what we are looking at but it is  
5 part of our problem. If that wasn't there, you  
6 know, it would solve something. Like I said, I  
7 went up at 5:00 and where that stop sign is or  
8 where the 'Do Not Enter' is, which is on private  
9 property, the guy just blew right through there,  
10 there is an arrow going right through the parking  
11 lot and now we can't control what the school,  
12 that's a problem I don't know how all of us solve  
13 because I don't consider that McNally street, it is  
14 somebody's private parking lot, we can't rule that  
15 as the village. So, then the school gives us this  
16 part of the road, I am not sure what I've seen has  
17 changed from the last lawsuit. I mean, we were  
18 maintaining the road then, we were plowing the road  
19 since 1967 when the school went up and we lost the  
20 case. So, I am not sure why I see that driveway  
21 there which is being part of the problem we are all  
22 seeing because it is a two-way road, I am not sure  
23 if it was ever legal to begin with.

24 So, I am really looking at the thing saying I  
25

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1  
2 don't see what changed from when we lost the  
3 lawsuit ten or twelve years ago. So, that's my way  
4 of thinking, I am sorry but that is the way I am  
5 going.

6 MR. FRISHBERG: I think I start with the  
7 statute which is I think, "All lands within the  
8 village which have been used by the public as a  
9 street for ten years or more continuously shall be  
10 a street with the same force and effect as if it  
11 had been duly laid out and recorded as such." So,  
12 the next thing I have to ask myself, has this been  
13 used as a street for ten years and what I am  
14 hearing from Mike is it has been used as a street,  
15 it is plowed as a street, maintained as a street,  
16 people walk on it like a street. I mean, it is  
17 true, he couldn't name more than one person who  
18 walks on that street but I can tell you I jog on  
19 that street, it is one of my jogging routes, I  
20 driven on that street into the middle school to  
21 pick my son up and, so, I personally have used that  
22 street. So, I think of it as a street. I am aware  
23 of -- I think that's the beginning of the inquiry.  
24 The other issue I think we have to address is Mr.  
25 Sweeney's argument as to whether or not it has to

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1  
2 be an easement by prescription which would mean it  
3 has to be adverse and that goes back to his title  
4 argument. And I did look at Section 13 of the  
5 statutes and that does not say that the title to  
6 the statute needs to be incorporated by reference,  
7 it is used to give someone a sense of what it is  
8 about but I don't see that it adds to the statute.  
9 I think you have to read the statute at face value,  
10 unless it is an ambiguity and I just don't see an  
11 ambiguity in the statute. So, the only issue in my  
12 mind is it has been used as a street for ten years.

13 The next issue is a little more sticky to me  
14 because I don't know the answer to that, whether or  
15 not the sidewalk issue affects our decision. Does  
16 McNally Street run to the gore, does it run to the  
17 sidewalk. I am not sure on that and I have to look  
18 a little bit more on that and I would like our  
19 attorney to chime in on that as well. That's a  
20 more difficult issue to me because the sidewalk --  
21 if you say the sidewalk and McNally Street are  
22 inextricably intertwined and are one of the same,  
23 then the sidewalk hasn't been there for ten years,  
24 so then what do you do? Because there is this ten  
25 year rule. I am not sure if they are inextricably

- PROCEEDINGS -

1  
2 intertwined or if they are just totally different,  
3 I am not sure. I am having trouble wrapping my  
4 arms around that and when I did a little bit of  
5 research on it I didn't find a clear answer to it.  
6 But if you are looking for my initial reaction -  
7 and I am open to change - is that it is a street  
8 and I think when C.H. Development bought that lot  
9 it was zoned -- I think it was zoned R-1, right?  
10 So, they had a reasonable expectation they could  
11 build a building on that lot, it seems to me that  
12 they had a reasonable expectation they could build  
13 a house on that lot. They bought it for the  
14 purpose of building houses. The driveway that's  
15 proposed goes to the two-way portion of McNally  
16 Street so you can make a right turn out of it. Is  
17 it a screwy street? Absolutely it is a screwy  
18 street, I have never seen a street like it. But  
19 does that mean it is not a street - I don't think  
20 so, I think it is a street. Sort of like a duck,  
21 if it looks and quacks like a duck it is a duck.  
22 So, my initial reaction is it is a street.

23 As to John's comment, I remember reading the  
24 case and in that case ten years ago the ZBA never  
25 took any testimony as to whether or not it had been

- PROCEEDINGS -

1  
2 used as a street. So, to the extent the ZBA made a  
3 mistake or perhaps they didn't think they had to,  
4 whatever it was --

5 MR. STAHLMANN: The ZBA never made a decision.

6 MR. FRISHBERG: Right. They never made a  
7 decision, they never reached that issue. The  
8 Village Board never reached that issue. So, since  
9 they never reached that issue I don't think it is  
10 binding on us. The answer is what has changed, I  
11 guess what's changed since then is we now have  
12 testimony before us that it was used as a street  
13 and the Village Board didn't have anything.

14 MR. STROBL: I haven't seen that street on a  
15 map or on a list. I mean, it says McNally Street,  
16 that is like saying the New York State Thruway, do  
17 you mean Rochester, I am in Goshen, I mean, where  
18 am I? I haven't seen the dimensions of where  
19 McNally Street, does it go from 1 McNally Street to  
20 13 McNally Street, and then skip and go from 20  
21 McNally Street to 50? I have not seen the list and  
22 you have to have it on the list or a map to prove  
23 it.

24 MR. STAHLMANN: One other question that I  
25 asked last meeting was whether or not that portion

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1  
2 of McNally Street was submitted to the State for  
3 State funding. And I know Mr. Sweeney's argument  
4 that's not what we rely on but if you ask me is  
5 that portion of McNally Street listed with the  
6 State of New York as a public road, the answer is,  
7 yes.

8 MR. STROBL: McNally Street or New McNally  
9 Street?

10 MR. STAHLMANN: Both sides of it.

11 MR. STROBL: But the gap in the middle and  
12 those dimensions, do we have the dimensions? Or is  
13 it all McNally Street?

14 MR. STAHLMANN: I don't have it in front of  
15 me. That's what I am saying.

16 MR. STROBL: And can we do eminent domain on  
17 our own property? I mean, I think Mr. Sweeney was  
18 asking that last time and I've been reading that  
19 and I am not sure if you can legally eminent domain  
20 the property that you used to own, I don't see it,  
21 I am sorry.

22 MR. FRISHBERG: If you make the determination  
23 that an easement by prescription is the standard  
24 why which we have to abide by, he is right, he's  
25 right, he's absolutely right. But I am not

- PROCEEDINGS -

1  
2 convinced that is our standard. I am convinced the  
3 standard is in the statute, not in the common law  
4 of virtual easement by prescription where you have  
5 to have an adverse claim. I don't read the statute  
6 the same as Mr. Sweeney.

7 MR. STAHLMANN: Anything you want to add, Mr.  
8 Palmer?

9 MR. PALMER: If I may, Mr. Chairman. The  
10 Court of Appeals, which is the highest court in the  
11 State of New York has append on ultimately - it is  
12 not a finite test - but it does append as to how  
13 one should review whether or not a village street  
14 is a village street and it focuses on the language  
15 of continuous public use from the village assuming  
16 control of the street during that ten year  
17 continuous use. There is no reference to the word  
18 prescription in the title, the cases have  
19 interpreted it to be continuous use for ten years,  
20 as well as assuming control.

21 MR. FRISHBERG: Which case is that?

22 MR. PALMER: That would be the Impasto Village  
23 of Catskill's case, that was submitted by Attorney  
24 Gaba, my associate. And it also sites a number of  
25 other Second Department case law which would be

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1 binding on this jurisdiction if it were to go to  
2 Supreme Court and identified, again, continuous  
3 public use for ten years and assumed control being  
4 the ultimate determining factors. There is no  
5 reference whatsoever to the word prescription all  
6 be it in the title of that subsection. And to  
7 address the Board Member's troubles comments with  
8 respect to the former case, it did address two  
9 pieces of, I guess, the matter that we have  
10 addressed here before this Board, one of which was  
11 this was a village street based on the Village  
12 Board resolution. The Village Board did not follow  
13 the protocol as outlined in the Village Law which  
14 identifies the public hearing and specific  
15 requirements to lay out a street. That was not  
16 followed by the Village Board. The determination  
17 that was made was ultimately whether or not that  
18 determination that they made was proper, and it  
19 also addressed - although it is sort of dicta -  
20 that it wasn't by prescription. But as Member  
21 Frishberg said, this was also that they didn't have  
22 the Superintendent of Highways there to for the  
23 record prepare any additional information.  
24

25 So, there are a number of factors to consider

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1 but ultimately to answer your question, the Court  
2 of Appeals and the Second Department have append  
3 specifically at its continuous public use and  
4 assuming control and a number of factors could be  
5 considered that being the use of the road, and  
6 again, evidence by the microsealing, testimony  
7 specifically from the superintendent was used  
8 within the Second Department to determine whether  
9 or not that could be considered a village road.  
10 There are a lot of factors but, again, it is for  
11 the Board to determine if that is, in fact, public  
12 use, but it did not focus on the prescription or  
13 easement by prescription which is, again, common  
14 law which is in existence before the statute. That  
15 was in that report for this specific subsection,  
16 which is ultimately village road by user but it is  
17 titled otherwise.  
18

19 MR. FRISHBERG: What about the argument which  
20 is what I am having trouble wrapping my arms around  
21 that Mr. Sweeney has made that assuming it meets  
22 the criteria of 6-626, what about the fact that the  
23 property does not have actual frontage on McNally  
24 Street?

25 MR. PALMER: The village law does not

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1 specifically speak, it does have a corresponding  
2 component to Town Law 280-A, which identifies that  
3 you do need frontage on a village street. But,  
4 again, it is a determination for the Board to make.  
5 Another question that you were going to request to  
6 present to Counsel was whether or not a sidewalk  
7 could be considered part of the village road. We  
8 did present in that same response to the Chairman,  
9 the specific case does identify that the traveled  
10 way is part of what could be considered the village  
11 street which could include sidewalks.  
12

13 MR. FRISHBERG: Well, that's my trouble with  
14 it. The sidewalks have only been around for six  
15 years, so, you obviously can't take control of it  
16 for ten.

17 MR. PALMER: Again, the traveled way  
18 constitutes for the shoulder, the shoulder itself  
19 can actually be considered that. The sidewalk is  
20 just another evidence of that. But, again, another  
21 Board determination as to that continuous use.

22 MR. STROBL: It is not the total width of your  
23 blacktop because like if you are working for a  
24 utility company, they measure from the middle of  
25 the road and I think the highways used to be from

## - PROCEEDINGS -

1  
2 the middle of the road, it was like 20 feet in so  
3 they can put telephone poles and everything else  
4 in. So, even though it is your grass front lawn  
5 they have to put a telephone pole there. So, you  
6 got that so-called automatic 'right-of-away' so  
7 that you can do utilities or power to your home and  
8 all of that even though the power company committee  
9 knows it is your property.

10 MR. STAHLMANN: Before I close the public  
11 hearing I would like to hear from the public.

12 MR. LOBREGGIO: My name is Len Lobreglio and I  
13 live at 183 Murray. What I've heard is evidence  
14 that it has been used by the public, I can say all  
15 of those exact same things about that road that  
16 goes up to the high school. I've jogged on it,  
17 I've jogged around the track.

18 MR. STAHLMANN: But the village does not  
19 maintain it.

20 MR. LOBREGGIO: No, I am just saying, I've  
21 walked on that road, I've been on my way to the  
22 mall and forgot something at home and went back and  
23 came around. Just about anything you can say to  
24 argue that that road going up to the middle school  
25 or to the intermediate school is a public road as

## - PROCEEDINGS -

1  
2 well.

3 MR. STAHLMANN: Except that the Village does  
4 not maintain it.

5 MR. LOBREGGIO: But as John pointed out that  
6 that road has never been maintained and that road  
7 always has. So, again, you know what I mean? In  
8 terms of its use by the public they are the same  
9 thing. You know, that road has been maintained and  
10 taken care of since the 60s as far as I've heard  
11 here. Like I said, I am a resident of only 30  
12 years, so, I don't know, but.

13 MR. STAHLMANN: Thank you very much. By the  
14 way, I live on Winston Drive and Mr. Jones was on  
15 the Board back in the 90s when I was appointed to  
16 this Board so I had to meet with him in order to  
17 have my seat and he said, "where do you live?" I  
18 said, "Winston Drive." He said, "Oh, those are new  
19 houses." "Well, they are 25 years old." He says,  
20 "Yeah, they are the new houses."

21 MR. SHERWIN: Is anybody aware that the  
22 village Board passed the resolution changing the  
23 street from the one-way street that we saw the  
24 resolution in the minutes from, I think, 2001 to a  
25 two-way street? I have never seen anything like

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1  
2 that. I talked to one of the attorneys for the  
3 village and they were not aware of any resolutions  
4 from the Board changing that street from a one-way  
5 to two-way - that's my first question. Question  
6 number two is - it seems what we are talking about,  
7 and I agree with John, that this street or driveway  
8 is in three parts, assuming all of these arguments  
9 are going against Mr. Sweeney's argument, are we  
10 saying the village part of the street is up to the  
11 school property and then it is on the other side of  
12 the school property but then you don't have the  
13 village street going through the school property?  
14 I think this is a real problem here, I don't think  
15 you can make the school property a village street  
16 no matter what you do.

17 MR. STAHLMANN: We are not being asked to name  
18 the school property as a public street, we are  
19 being asked to deal with this - what you want to  
20 call - New McNally Street.

21 MR. SHERWIN: So, are we saying then that the  
22 issue is where Mr. Nuzzolese drew the line on the  
23 drawing and put his initials?

24 MR. STAHLMANN: I am not relying on Mr.  
25 Nuzzolese's initials on your piece of paper if that

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is what you are asking.

MR. SHERWIN: Or on the survey map, Exhibit 5, are we saying up to that school line, that's the part that is an issue? How does one then go through the school property? And the third part I want to make - if the Village of Goshen wanted to make this a public street don't you think they would've addressed it in the last twelve years? Why is the ZBA faced with this type of decision without a public hearing which required to make a street a public street and trying to make this very difficult decision without all the public input, without the school's input, without the police chief's input, like they did in the last situation. So, I just think that we are going about this -- we are kind of like trying to back into this like they tried to do ten years ago and I can tell you, I don't think that the courts are going to favor that backing in. I think if the Village wants this to be a public street they should address it, take it face on, head on, have the Village Board meeting, have a public hearing, have testimony of the police chief, the school superintendent, principal and people that are involved so that it is clear what

- PROCEEDINGS -

1  
2 all of the issues are. So, I just think that the  
3 Board is being placed in a very untamable position  
4 which you shouldn't be placed in and I think that  
5 for the Board to make this determination is  
6 inappropriate and I don't think you should be asked  
7 to.

8 MR. STAHLMANN: Thank you.

9 MR. SWEENEY: One last statement. I want to  
10 put a sticky on that and make it Appellant's  
11 Exhibit 7. That is the questions I put in front of  
12 you.

13 (Whereupon, Appellant's Exhibit 7, a packet of  
14 questions, was marked for identification.)

15 MR. SWEENEY: I will just say one word - I  
16 think Mr. Sherwin has summed it up. The matter  
17 before you is for the Village Board, it is not for  
18 you. Thank you.

19 MR. HOOVER: And I would like to say one word  
20 - but it was brought to you. And unpleasant as it  
21 might be, the decision now rests in your lap.

22 MR. STAHLMANN: Yes, sir. Thank you all. Can  
23 I please have a motion with regard to the public  
24 hearing?

25 MR. FRISHBERG: I will make a motion to close

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the public hearing.

MR. STROBL: I second that motion.

MR. STAHLMANN: All in favor?

MR. FRISHBERG: Aye.

MR. STROBL: Aye.

MR. CLARK: Aye.

MS. CIONE: Aye.

MR. STAHLMANN: Can I have a motion with regard to the question before us?

MR. FRISHBERG: Let's bring the question before us. What's the question before us, because we have Mr. Sweeney's sheet. I agree with most of his questions except for number -- I disagree with the use of the word adverse.

MR. STAHLMANN: Hold that thought. Let me do it this way. Let me get to the original application.

MR. FRISHBERG: We consider this de novo, right? It is de novo, this determination, correct?

MR. PALMER: Yes, correct.

MR. STAHLMANN: What we are being asked is a very simple question. What the relief being requested by the applicant is to annul the building inspector's issuance of a building permit to allow

- PROCEEDINGS -

1  
2 for the construction of a single-family dwelling at  
3 premises located at 14 McNally Street. That's the  
4 question before us. Are we annulling the building  
5 inspector's issuance of the building permit or are  
6 we affirming the building inspector's issuance of  
7 the building permit? That's the question before  
8 us. These other things are legal arguments that  
9 get you to where any of you need to go but the  
10 question and the resolution is a simple one, and  
11 the simple question is are we annulling the  
12 building inspector's issuance of the building  
13 permit or are we affirming the issuance of the  
14 building inspector's permit?

15 MR. FRISHBERG: That turns on whether McNally  
16 Street has been a street for ten years under  
17 control of the village? At least that is my view  
18 of it.

19 MR. STAHLMANN: But the question is a simple  
20 one. Do we have a resolution with regard to that?

21 MR. FRISHBERG: I will make a motion to  
22 affirm, I guess, the building -- or not to annul, I  
23 guess that would be the better way to say it.

24 MR. PALMER: It would be to affirm.

25 MR. FRISHBERG: I will make a motion to affirm

## - PROCEEDINGS -

the building inspector's issuance of a building permit.

MR. STAHLMANN: Do I have a second?

MS. CIONE: Second.

MR. STAHLMANN: All in favor?

MR. STAHLMANN: Aye.

MR. CLARK: Aye.

MR. STAHLMANN: Opposed?

MR. STROBL: (Whereupon, Mr. Strobl raised his hand.)

MR. STAHLMANN: Four votes to one. That's where we are. Thank you all for hanging in there for two meetings and thank you for your time.

(Proceedings concluded at 8:29 p.m.)

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7 Packet of Questions

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## C-E-R-T-I-F-I-C-A-T-I-O-N

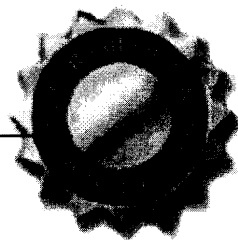
I, Jennifer A. Dentino, a stenographic Court Reporter and Notary Public within and for the State of New York, hereby certify:

That I am not related to any of the parties to this action by blood or marriage and I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script, reading "Jennifer A. Dentino", written over a horizontal line.

Jennifer A. Dentino

Court Reporter



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