

## MINUTES

Town of Wappinger  
Zoning Board of Appeals  
February 8, 2011

Town Hall  
20 Middlebush Road  
Wappinger Falls, NY

### Summarized Minutes

**Members:**

Mr. Prager,	Chairman
Mr. Kuzmicz,	Member
Mr. Casella,	Member
Mr. VanTine,	Member

**Absent:**

Mr. DellaCorte,	Member
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**Others Present:**

Mr. Horan,	Town Attorney
Mrs. Roberti,	Zoning Administrator
Mrs. Dao,	Secretary

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## SUMMARY

### **Public Hearings - Interpretation:**

**A. W. Scrap Processors:**

- Public Hearing closed. Discussion on  
March 8, 2011.

**Miscellaneous:**

-Minutes accepted for 10-12-2010  
10-26-2010  
12-16-2010  
1-25-2011

Mr. Prager: Since we have a fairly big crowd I would like to start out by pointing out where the fire exits are.

**Mr. Casella:** **Motion to approve the minutes for 10-12-2010, 10-26-2010, 12-16-2010, and 1-25-2011.**

Mr. Kuzmicz: Second the motion.

Vote: All present voted aye.

**Public Hearings - Interpretation:**

**Appeal No. 10-7430**

**A.W. Scrap Processors, Inc.**- Seeking an Interpretation of Section 240-16(B)(1): Nonconforming uses and structures, Town of Wappinger Zoning Code as to the use of the 4 acre southern portion of the property. The property is located **1978 Route 9D** and is identified as **Tax Grid No. 6056-02-688723/721673/680695** in the Town of Wappinger.

Mr. Prager: Mrs. Dao, are all the mailings in order?

Mrs. Dao: Yes they are.

Mr. Kuzmicz: **Motion to open the public hearing.**

Mr. Prager: Second the motion.

Vote: All present voted aye.

Mr. Prager: Please state your name for the record and explain what you need and why you need it.

Mr. Sarcone: I am the attorney for the applicant. Since this is a public hearing I would like to read into the record the reason for the appeal. A.W. Scrap is a pre existing non conforming junkyard business located on 1980 Route 9D. We are presently before the Planning Board with an application for site plan approval. Pursuant to section 240-16d (2) of the Town of Wappinger zoning code. A question had arisen in regards to the use of the four plus acres of the southern portion of the subject property adjacent to the office. The four acre plot is presently being used for parking of employees and the customer vehicles. We call it "off street parking". ..... This area is the safest location for the parking. There is no place to park other than here. With regard to off street parking section 240-96a.....the Planning Board has referred this to your board for interpretation In that the parking area may be continued to be utilized by A.W. Scrap in connection with it's non conforming junkyard. A.W. Scrap

request an interpretation that the continued use of the aforementioned portion of the subject property for accessory off street parking would not constitute an impermissible expansion of the preexisting non-conforming use as prohibited to section 240-16b(1).....A little history, there are witnesses that came here today to testify to this, including the co-founder of this junkyard back then in the 1950's. You'll hear testimony that dating back to the 1950's that this area historically was used for junk cars. ....A. W. Scrap bought the property in 1997. The area was all junk cars, parts, refrigerators, etc. ....We had an agreement on record with the Planning Board... The Planning Board will not approve any plans that are beyond what we are discussing here. There is a sign-in list of people that want to speak. The maps that the witnesses we speak about is from 1955. (Mr. Sarcone showed the board several maps, explaining where the areas are in question).

- Mr. Horan: John, for the record what is the source of the photos?
- Mr. Sarcone: They are from Dutchess County Real Property Office.
- Mr. Horan: Ok.
- Mr. Kuzmicz: Are they date stamped?
- Mr. Sarcone: Yes they are. I believe they are April and May of the years.
- Mr. Prager: I'm going to open the floor to speakers that have anything for or against this variance. I will go off the list.
- Mr. Milano: John Milano of 26 Daisy Lane. I'm here to speak for the yard. My family has owned a business up here since 1970. We've been using the yard for years. I do remember walking thru the yard and there were cars all over the place. This parcel was being used throughout the years that I was going through the junk yard.
- Mr. Prager: What years was that?
- Mr. Milano: Probably 1973-1974, in that era up to the 80's. I used to deal with the owner Pricilla personally. I walked through there several times to take parts out. I think it is a good benefit for the area. I use it now for my business. It is an asset to have.
- Mr. Prager: All right. Thank you.
- Mr. Kuzmicz: When did you say it was the first time you went there?
- Mr. Milano: I had to go there with my father in 1972-1973 maybe.

- Mr. Kuzmicz: How often would you say you used it?
- Mr. Milano: Maybe every other month.
- Mr. Kuzmicz: Where would you park?
- Mr. Milano: In the front by the house other wise we would drive in because we knew the people.
- Mr. Kuzmicz: No particular parking spot?
- Mr. Horan: If you were taking parts off a car, you would drive up to the car?
- Mr. Milano: Yes.
- Mr. VanTine: When did you last visit the site?
- Mr. Milano: One month ago.
- Mr. Kuzmicz: Point to the map where parking was.
- Mr. Milano: Here. (Mr. Milano pointed to the 4 acre parcel)
- Mr. Horan: Let the record reflect the witness is identifying the 4 acre area.
- Mr. Prager: Are you showing the back of the building?
- Mr. Milano: No along side of the building beyond the building.
- Mr. Prager: Mrs. Dao the area he is pointed to is in the area where the parking was. Thank you. Next speaker please.
- Mr. Prindle: Tim Prindle of 32 Sheaf Road. I've lived in Wappinger for 40 years. I've been raised in this business of the salvage yard. I speak because I'm friends for over 25 years with Albert Wienart. It's against my will to come; it's a problem with my family with stress and problems going on. It's upsetting to my family to see this going on. I'm stressed because I will have to face my family about this. I remember when Sid Shapiro owned the yard. In the 50's I can't give you much. I was just a kid. I was pulling steering wheels for my go-cart. My earliest recollection was 1967. When I was in high school, I spent summers working there. The area in question was so packed; it was hard to get through it. The area was cleared for the power lines.

- Mr. Kuzmicz: You said you began working there in the 60's, When you said the side area was used for cars and parts, were these cars people took parts off of, or were they parked cars?
- Mr. Prindle: The cars were for parts.
- Mr. Kuzmicz: Did customers park there? Did the condition exist when you worked in the 60's & 70's?
- Mr. Prindle: The customers parked where ever they could.
- Mr. Horan: Who would typically bring cars in there and put them in the area? Would it be a wrecker?
- Mr. Prindle: Family that is here tonight & also my brother.
- Mr. Prager: Thank you.
- Mr. Shapiro: I'm Sal Shapiro of 58 Widmer Road.
- Mr. Kuzmicz: What do you know about the parking area?
- Mr. Shapiro: We parked cars by the fence until we had time to move them to the back. That is what the area was used for.
- Mr. Casella: Was it used for storage or is that where people parked? Were cars for parts parked there?
- Mr. Shapiro: We parked them on the left hand side until we could take them out back.
- Mr. Casella: So there were non-working cars in this area? No parking there? Where did you park when you came in?
- Mr. Shapiro: People parked by the house.
- Mr. Prager: Thank you.
- Mr. Sarcone: Mr. Shapiro, You're the original owner, is that correct.
- Mr. Shapiro: No, I worked there.
- Mr. Sarcone: Was this in the 1950's, early 60's?
- Mr. Shapiro: My brother owned it I worked there.
- Mr. Sarcone: Do you remember how old you were?

- Mr. Shapiro: Thirty – Thirty five.
- Mr. Sarcone: How old are you now?
- Mr. Shapiro: I'm eighty five.
- Mr. Sarcone: I think we can establish a year there.
- Mr. Prager: Thank you.
- Mr. Paulin: I'm Todd Paulin. I live at 1981 Route 9D. I am a former employee of Mid-Hudson Auto Wreakers when Sid and Pricilla owned it. In 1985 the area in question used the parking and storage of cars. Since 1985 the southern end has expanded. In 1985 we might have handled 20 customers a day, as of 2010 we handle 200 customers a day. The volume is a lot. In 1985 it was used for storage, now in 2011 we need it for parking for the expansion of customers.
- Mr. Kuzmicz: In 1985 is your first experience with this area. Is that correct?
- Mr. Paulin: Yes.
- Mr. Kuzmicz: And at that time it was used for storage of cars?
- Mr. Paulin: Storage and dismantling, there was no designation. You parked wherever you could. Now there are more customers, you need a place to park. It is a safety issue.
- Mr. Prager: Thank you.
- Mr. Blom: My name is Greg Blom, I live at 24 Old State Road. In my later teens I worked for Jack Auto body. At that time He would send me down to Mid-Hudson Auto Wreakers for parts. I recall all that area was full of cars. There was very limited parking.
- Mr. Prager: What were the earliest years that you remember?
- Mr. Blom: It was 1974-1975. My boss and Sid had a good working relationship.
- Mr. Kuzmicz: Where did they put cars?
- Mr. Blom: You were lucky if six cars could park.
- Mr. Kuzmicz: So you don't remember if there was designated parking?
- Mr. Blom: I know they had a wooden fence gate they would close at night. People would drop stuff off and leave it there. You would try to park near the

office to let them know you are there. There were junk yard dogs, so you wouldn't want to walk back there by yourself. From what I remember to now, it's really downsized over the years. I wouldn't want to drive my car back there. You take the chance of popping your tire. Having that parking lot would be a really good idea.

Mr. Prager: Thank you.

Mr. Rozner: I'm William Rozner and live at 1950 Route 9D. In 1956 I bought my home. There was no junk yard. Sid Shapiro was on Route 9 than moved to Route 9D. He had cars all over the place. They even had cars on the back of my property. I had to get the Zoning Administrator to get them moved. I misunderstood what this meeting was about. They got the lot cleaned up. It looks good. I have no problem with it. Having that little piece that they want wouldn't be bad at all, just as the zoning would stay as it is.

Mr. Prager: Thank you.

Mr. Odell: My name is Scott Odell and I live in Westboro, New York. I own the house right next to the 4 acres and I have no problem with it, because I also own the junk yard. I put a lot of money into the house. I was not going to do anything to make it a dump. I have a lot of money invested in it. We're going to try to keep it nice and clean. We've done everything that the town has asked us to. New fence and paved the driveway.

Mr. Kuzmicz: When did you buy the house?

Mr. Odell: I bought the business in 1997 and own the house for two years.

Mr. Kuzmicz: So, in 1997 was the chase to see that area. In 1997 it sounds like it was a storage area.

Mr. Odell: There were cars, busses and debris when we bought the business.

Mr. Kuzmicz: Dilapidated cars and busses.

Mr. Odell: Wherever the tow trucks can back in a vehicle, they left it. A lot of parts were in the building. Pricilla said they used to use the power line area. The substation was removed and moved down the street. We keep it clean and nice. We have a vested interest in it.

Mr. Prager: Thank you. Does anyone else want to speak for or against this? Let the record show nobody else is interested in speaking for or against it. I have some questions. Why didn't A W Scrap buy this parcel in 2004 when the yard was bought in 1997?

- Mr. Odell: We didn't have the money to buy it. It was in the contract to buy that piece of property.
- Mr. Prager: When did Mid-Hudson Auto Wreakers acquire subject lot?
- Mr. Sarcone: We've been trying to establish that. We think about 1957-1958. Mr. Shapiro testified and said he first started there when he was 35 years old. He is now 85 years old. Calculated back, that's 1961, Pre-dating zoning.
- Mr. Odell: I have licenses from when we bought the place from Pricilla, they go back to 1958. Maybe they didn't have it filled up in 1958. They established it in 1958.
- Mr. Prager: When did Mid-Hudson Auto Wreakers purchase the lot with the office?
- Mr. Sarcone: When they bought the whole junkyard.
- Mr. Prager: So Shapiro bought the 4 acres with the office with the original lot in 1958-1961.
- Mr. Sarcone: Yes.
- Mr. Prager: Who did Mid-Hudson Auto Wreakers purchase the lot from?
- Mr. Odell: From Mr. Poppola.
- Mr. Prager: Do you know if he is alive or deceased?
- Mr. Odell: Deceased.
- Mr. Prager: When were the lots first used as a junkyard?
- Mr. Sarcone: 1958.
- Mr. Prager: When was the subject lot used for junkyard purposes?
- Mr. Sarcone: According to Mr. Shapiro it was used in 1961.
- Mr. Prager: And the owner at that time was Mr. Shapiro?
- Mr. Sarcone: Yes his brother Sid. .
- Mr. Prager: What was the use of the property in 1963 when zoning was first enacted in the Town of Wappinger? I think we answered that, 1961

- Mr. Sarcone. Base on the testimony from Mr. Shapiro and other witnesses 1961.
- Mr. Horan: If we could get a copy of the license from 1958 that would be good.
- Mr. Prager: What was the use of the property in 1977 when the junkyard ordinance was enacted?
- Mr. Sarcone: Same use. We had 2 witnesses from the 1970's, Mr. Malano and Mr. Blom.
- Mr. Prager: Were there any leases?
- Mr. Sarcone: Not that we know of. None located.
- Mr. Horan: Was the junkyard and 4 acres owned by the same person?
- Mr. Odell: Yes, Pappola.
- Mr. Prager: Was there money paid for this parcel? Do you have any receipts?
- Mr. Odell: Yes, the 4 acre parcel we bought it for \$99,000.
- Mr. Casella: Today you're parking in the proposed area?
- Mr. Sarcone: Yes.
- Mr. Casella: Why didn't you ask for a zoning change?
- Mr. Sarcone: It was talked about in negotiations. The Town would have to do a rezoning just to accommodate this one business. It would be a big undertaking. As a compromise we just want a small strip to use for parking. It could take years to rezone. The Town wants us to be conforming and have a valid site plan on file.
- Mr. Casella: Are you asking us today as an interpretation to be classified as non-conforming use?
- Mr. Sarcone: That's correct.
- Mr. Casella: And it's only an interpretation of what we think? Is that what you're asking for?
- Mr. Sarcone: Yes, based on the testimony and evidence that has been provided.
- Mr. Kuzmicz: What your interpretation in saying is not what you are saying now. It's saying for the continued use of the subject property for accessory off street parking, not for operational use.

- Mr. Sarcone: Part of their operations is people have to park.
- Mr. Kuzmicz: I'm trying to have clarity. This is a small area for parking.
- Mr. Sarcone: I want it to be clear, no tricks.
- Mr. Casella: What happens if we approve this? Do you go back to the Planning Board?
- Mr. Sarcone: We go back to the Planning Board and if nothing else is needed they grant the approval the site plan. My clients are going to make a lot of improvement to temper the noise and also the visual. Sound barriers, screening for noise, shrubs and berms, all laid out on the details of the plans.
- Mr. Casella: When do they plan to execute, in the spring?
- Mr. Odell: As soon as it's approved.
- Mr. Casella: You were supposed to unload the steel that was stacked up. Did you do that?
- Mr. Odell: Yes we did. The prices of steel are dropping so we are getting out as much as we can.
- Mr. Casella: So it must have really opened things up. How many parking spaces do you plan on having?
- Mr. Odell: Fifteen for employees and customers.
- Mr. Casella: Jim, do we need to know anything else?
- Mr. Horan. The burden is on the applicant to prove there was in fact a legal non-conforming use prior to zoning. The zoning code was enacted in 1963. Evidence was presented that there was uses prior to 1963 as a junkyard. They are going to continue the use of the property. Parking would be considered a portion of the use of the property. It was used as a junkyard and storage of parts. A parking lot would be a less intensive use.
- Mr. Kuzmicz: Could you make those cases available to us to take a look at?
- Mr. Horan: Sure. They're not changing the use. They are going to continue a different portion of the use on the property. I think clearly that would be permitted. There has been no evidence to the contrary presented at this hearing.

- Mr. Prager: Being that we are waiting for that license, do you recommend that we leave the public hearing open or can we close this and then get the license?
- Mr. Horan: We have 62 days to make a decision. You can close the public hearing now unless the applicant wants to submit any more information.
- Mr. Odell: I have the license back at the yard. I'll copy it tonight and give it John.
- Mr. Prager: You can give it to Mrs. Dao.
- Mr. Kuzmicz: Jim, I would also like to see those papers.
- Mr. Horan: (Discussed a case from Greenport Long Island in reference to storage of boats and parking)
- Mr. Kuzmicz: **Motion to close the public hearing.**
- Mr. VanTine: Second the motion.
- Vote: All present voted aye.
- Mr. Prager: We'll have our decision within 62 days. I'd like to have it by the next meeting. If we get that information from you about the case law and we get the license, I don't see why we couldn't make the decision by the next meeting.
- Mr. Horan: I will e-mail it.
- Mr. Sarcone: I'd like to thank you and for having the patients of listening. I think the applicant has established beyond any doubt the legal criteria that this was a pre-existing non-conforming use part of the operation continuous from 1962. There has been no evidence whatsoever to repute that. Notwithstanding any case law from the State of NY, the law is clear, that this a pre-existing non-conforming use that pre dates zoning. We presented evidence, which was our burden to do. There's no evidence to the contrary. I respectfully ask that the board grant the application and my clients would go back to the planning board and move ahead. Thank you.
- Mr. Prager: Thank you and everyone for coming. The next meeting is March 8, 2011 because February 22<sup>nd</sup> is the Association of Towns.
- Mr. Horan: I would like to go into executive session for receiving legal advice.
- Mr. Prager: **Motion to go into executive session.**
- Mr. VanTine: Second the motion.
- Vote: All present voted aye.

Mr. Casella: **Motion to come out of executive session.**

Mr. VanTine: Second the motion.

Vote: All present voted aye.

Mr. Prager: (Read into the record a letter dated January 24, 2011 from Central Hudson Ms. Veronica Bardunars, to take into consideration).

Mrs. Roberti: I believe the board has received a variance application from Mr. Indorf. I took it off tonight's agenda. The Indorfs live on Old Hopewell Road. I shut Mr. Indorf down back in September. He moved his driveway without DPW's or our approval. The lot he is on had a maintenance agreement for a shared driveway to the property in the back. By moving his driveway he has land locked the property behind him. The last few months he has been coming to the planning board to work things out. He has to amend his zoning map and file it with a new maintenance agreement, giving these people access. When I walked his property with him I saw a shed that is close to the property line. On his survey map I asked him to have the shed on it. Mr. Indorf wants an in-ground pool. I can't let him come before you as long as there is a violation. His pool in the back yard is also going to be the front yard of the other house.

Mr. Horan: Is this a flag lot?

Mrs. Roberti: It is unusual. He can't come in from Old Hopewell Road. He has to come in through Mr. Indorf's property. When and if the problem is fixed on Old Hopewell Road, I want to see the new survey to show you where he wants the pool.

(A discussion took place at the dais viewing the map and history of how the driveway came to be).

Mr. Kuzmicz: **Motion to adjourn.**

Mr. Casella: Second the motion

Vote: All present voted aye.

Meeting ended at 9:00 PM

Respectfully Submitted,

Susan Dao, Secretary  
Zoning Board of Appeals