

OCT 16 2018

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TOWN OF AMENIA

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TOWN OF AMENIA ZONING BOARD OF APPEALS

Resolution # 1 for 2018

Resolution Denying Appeal and Request for Variance

WHEREAS, Highway Displays, Inc. (the "Applicant") with an address of 404 Maple Street, Poughkeepsie, New York 12601, operates a display sign (the "Subject Sign") located along Route 22 at 253 Deep Hollow Road, Grid #7065-00-596985 (the "Subject Property"); and

WHEREAS, Section 121-39.C of the Town of Amenia Zoning Code (the "Code"), adopted on or about July 19, 2007, prohibits, among other things, off premises commercial signs; and

WHEREAS, the Subject Sign is an off premises commercial sign, prohibited by Section 121-39.C of the Town Code; and

WHEREAS, Section 121-39.D.6 of the Code provides in relevant part that signs that were legally in existence prior to July 19, 2007 that no longer conform to the Code are permitted to continue for a five-year amortization period that terminated on July 1, 2012, at which time such signs were to have been replaced with conforming signs or removed; and

WHEREAS, as of the date of this Resolution, over eleven years have passed since the adoption of the Code provisions prohibiting such signs, and the Subject Sign has not been removed; and

WHEREAS, Section 121-39.D.6 of the Code provides a means to extend the five-year amortization period, by temporary variance granted by the Zoning Board of Appeals ("ZBA"), provided the applicant demonstrates the original five-year amortization period is confiscatory as applied to the specific sign. The period of the variance granted pursuant to this section must be the minimum reasonably necessary to avoid confiscation; and

WHEREAS, the Applicant did not request a variance on or before July 1, 2012 to extend the amortization period beyond July 1, 2012, further, Applicant did not submit a written request for a variance to extend the amortization period beyond July 1, 2012 until May 2017, nearly ten years after the enactment of the Code provisions prohibiting such signs; and

WHEREAS, on July 6, 2016, the Town of Amenia Building Department issued a Notice of Violation and Order of Remedy to Applicant and Deep Hollow Game Preserve, the purported

owner of the land on which the Subject Sign is situated, notifying each party that the Subject Sign is in violation of Section 121-39 of the Code and ordering the Subject Sign removed (the "Notice of Violation"); and

WHEREAS, notices of violation were issued to Applicant relative to other signs located in the Town of Amenia; which other signs were ultimately removed; and

WHEREAS, by letter dated August 26, 2016, Applicant filed an appeal of the Notice of Violation, seeking a reversal of the decision of the Code Enforcement Officer (the "CEO"), as well as other decisions of the CEO contained in similar notices for other locations that have since been resolved; and

WHEREAS, by letter dated May 22, 2017 Applicant supplemented its application seeking to reverse the decisions of the CEO and requested that in the alternative, the ZBA issue a variance as provided for in Section 121-39.D.6 of the Code for a period of at least ten (10) years (along with other supplemental submissions, collectively referred to as the "Application"); and

WHEREAS, a public hearing on the Application was opened on June 5, 2017, which public hearing was continued until September 17, 2018; and

WHEREAS, the ZBA referred the Application to the Dutchess County Department of Planning and Development ("County Planning Department") for its review and recommendation under Section 239-m of the NYS General Municipal Law; and

WHEREAS, by letter dated June 6, 2017, the County Planning Department recommended that the ZBA not grant the *"temporary variances for the involved off-premises advertising signs, unless adequate proof is presented that shows the amortization periods provided have not been adequate to avoid confiscation"* and noted that if the ZBA acts contrary to its recommendation, the law requires it to do so by a majority plus one of the full membership of the ZBA; and

WHEREAS, on August 14, 2017, counsel for Deep Hollow Game Preserve, LLC ("Deep Hollow") sent a letter to Applicant, indicating that Deep Hollow is the owner of the Subject Property and requesting that Applicant remove the Subject Sign from the Subject Property; and

WHEREAS, Deep Hollow has not contested the Notice of Violation it received relative to the Subject Sign; and

WHEREAS, by letter dated September 11, 2017, Daniel T. Carello indicated that he owns the Subject Property and is supportive of the Applicant's appeal; and

WHEREAS, John V. Andrews, Jr. P.E., (the "Town Engineer") submitted a memorandum to the ZBA dated September 27, 2017 addressing the ownership of the Subject Property, indicating that he could find no evidence supporting the proposition that the Subject Property is owned by Daniel Carello and stating: *"The information that we were able to locate indicates that the property upon which the sign is purportedly located was among several*

properties consolidated into one parcel under the ownership of Shope ... and subsequently conveyed by Shope to the Deep Hollow Game Preserve on March 7, 2016” Further, the Town Engineer stated that based on his review *“it would appear that the property underlying the current sign location is owned by Deep Hollow Game Preserve”* and further indicated that his opinion was subject to the facts and circumstances revealed by a complete abstract of title; and

WHEREAS, in an email dated October 25, 2017 to the ZBA’s attorney, Deep Hollow’s attorney indicated that Deep Hollow does not consent to Applicant’s application for a variance; and

WHEREAS, the Town Engineer submitted a follow-up memorandum to the ZBA on November 9, 2017, which provided in part *“based on the location of the sign on the slope and its distance from the highway it appears that the sign is outside the State ROW and on private property. The documentation available indicates that the underlying property is owned by the Deep Hollow Game Preserve, LLC, as confirmed by the title work”*; and

WHEREAS, a sketch map prepared by Bly and Houston Inc. Land Surveyors dated June 13, 2018 (the “Sketch Map”) reflects the Subject Sign is not in the State Highway Right of Way but rather sits on land listed on the Tax Map as being that of Deep Hollow Game Preserve LLC; and

WHEREAS, in an email dated July 19, 2018, to the ZBA’s attorney, Deep Hollow’s attorney indicated that Deep Hollow still objected to the presence of the Subject Sign and does not consent to Applicant’s application for a variance; and

WHEREAS, in a letter dated August 16, 2018, Sneeringer Monahan Provost Redgrave Title Agency, Inc. stated: *“Upon reviewing the deeds of record filed with the Dutchess County Clerk’s Office, the tax maps and assessments maintained by Dutchess County Real Property, and the map entitled “Sketch Map prepared for the Town of Amenia” dated June 13, 2018 and made by Bly & Houston Inc land surveyors, we are of the opinion that the billboard in question is on the lands owned by Deep Hollow Game Preserve LLC.”*; and

WHEREAS, the Town Engineer, in a memorandum dated August 17, 2018, in part referencing the Sketch Map, indicates that *“This Sketch map was intended to and does confirm the fact that the sign is outside the State Right-of-Way. As indicated on the Sketch Map, the Tax Maps suggest that the underlying owner is Deep Hollow Game Preserve, LLC., a conclusion previously suggested to you by us in our memo dated September 27, 2017. There is insufficient evidence in the record to support any other conclusion.”*

WHEREAS, pursuant to 6 NYCRR Part 617.5(c) Applicant’s appeal of the decision of the CEO is a “Type II” under the New York State Environmental Quality Review Act (“SEQRA”), rendering the ZBA’s decision on the appeal not subject to the requirements of SEQRA; and

WHEREAS, the ZBA is not issuing a determination on the Applicant’s request for a variance as provided for in Section 121-39.D.6, because the Applicant has not provided evidence

that the owner of the Subject Property, Deep Hollow, consents to the requested variance, therefore there is no "Action" as defined in 6 NYCRR Part 617.2(b) which would trigger SEQRA's applicability to the request for a variance; and

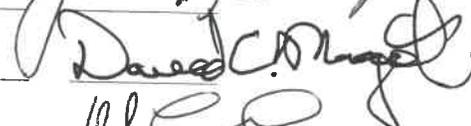
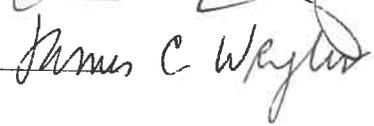
WHEREAS, the ZBA is acting to deny Applicant's appeal of the Notice of Violation, which will enable to CEO to advance the abatement of the violations as provide for by the Code, including by the institution of an appropriate legal action or proceeding to have the sign removed, pursuant to Section 121-57 of the Code.

NOW THEREFORE, BE IT RESOLVED, Applicant's appeal of the Notice of Violation, seeking a reversal of the decision of the CEO is denied, given the plain language of Section 121-39.C.1 of the Code, which prohibits, among other things, off-premises commercial signs, which the Subject Sign is; and

BE IT FURTHER RESOLVED, the ZBA finds it does not have jurisdiction to consider Applicant's request for a variance to extend the amortization period beyond July 1, 2012 as provided for in Section 121-39.D.6, because the Applicant has not provided evidence that the owner of the Subject Property consents to the request for a variance, rather, the apparent owner of the Subject Property has specifically indicated that it does not consent to Applicant's request for a variance; and

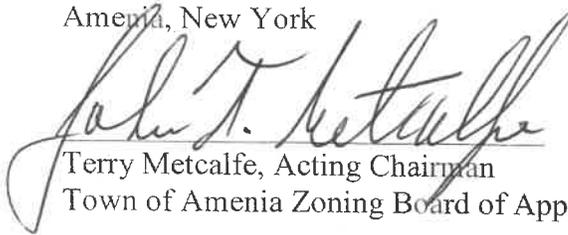
BE IT FURTHER RESOLVED, that a copy of this Resolution shall be filed in the office of the Town of Amenia Town Clerk within five (5) days of the date of this Resolution, and shall be mailed to the Applicant within the same five (5) day period.

The foregoing resolution was voted upon with all members of the Zoning Board of Appeals voting and signing as follows:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>	<u>Signature</u>
Terry Metcalfe, Acting Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
David Menegat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Michael Chamberlin	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Paula Pelosi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
James Wright	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Dated: October 15, 2018

Amenia, New York



Terry Metcalfe, Acting Chairman
Town of Amenia Zoning Board of Appeals