

MINUTES OF JOINT PUBLIC HEARING WITH THE VILLAGE OF HUNTER FOR A PETITION FOR ANNEXATION SCRIBNERS CATSKILL LODGE AND WHISTLE TREE DEVELOPMENT CORP HELD ON TUESDAY, DECEMBER 13, 2022, AT 5:30 PM AT THE TOWN HALL LOCATED ON RTE. 23A IN TANNERSVILLE, NEW YORK

Present:	Sean Mahoney	Supervisor
	David Kukle	Councilman
	Raymond Legg	Councilman
	Ernest Reale	Councilman
	Dolph Semenza	Councilman
	Corina Pascucci	Town Clerk
Others Present:	Michael Papa	Mayor, Village of Hunter
	Ben Sommers	Trustee, Village of Hunter
	John Farrell(arriv. 6:16)	Superintendent of Highways
	Robert Blain	Hunter Highway Department
	Lara Hamrah-Poladian	Secretary to the Supervisor
	Jason Kovacs	Town Attorney
	Marc Czermerys	Planning Board Chairman
	Sgt. Robert Haines	Hunter Police Department
Sarah Pellizzari	Code Enforcement Officer	
	Plus, all names on attached listing.	

Via Zoom – Alycegorch, iphone, Jeremy Hinsdale, Marc Chodock, Samantha White, Tal Rappleyea

Supervisor Mahoney opens the Public Hearing at 5:28 PM.

Hyde Clark of Young & Sommer states the request is for the parcel to be annexed from the Town into the Village adding that there are approved cabins on the parcel to be annexed in which is a public benefit and increase tax base for the Village of Hunter.

Frank Castro states he is a neighboring landowner and is on the HOA Board. He states there are issues with the permits already outstanding adding that since the cottages above the hill have been there, the entry road has completely washed away, and he states someone has placed large rocks in three locations within the ditch that drains the water causing the road to wash away. He states that a second permit was issued where the well heads were installed. He feels that by filling in the drainage ditch this has caused buildings to flood and the neighbors all have to look at construction debris and a junk car.

Guy Chirico states he is a customer of the Whistle Tree water supply. He has serious concerns as to the procedure and permits issued. They are outlined below in his email.

Dear Supervisor, Mayor, Members of the Boards, Counsels and the several other addressees:

I am a water supply customer of Whistle Tree Development Corporation, a lifelong resident of the Village and Town of Hunter, and an Attorney Licensed to practice law in NYS. I represent only myself in this proceeding.

More to the point (beyond my standing to appear at this matter) I owned and operated Whistle Tree Development Co, Inc. for 25 years before I sold it (along with Scribner Hollow) to Mr. Chodock.in November 2015 and am thus the individual most familiar with the operation & components of the system and with the various legal and regulatory commitments under which Whistle Tree Operates.

Please note: the various corporations owned and/or controlled or managed by Mr Marc Chodock (including Mr. Chodock himself, Whistle Tree Development Corporation, Scribner's Catskill Lodge LLC, Escape Hospitality and any other related entities unknown to me at this time shall be hereinafter referred to as "Mr. Chodock), as upon information and belief he is the majority and/or controlling stockholder of all of these entities, despite having signed his petition as "Manager".

PLEASE FURTHER NOTE: I am requesting to speak first or very early in this proceeding, as I believe that my testimony (and that of the Scribner HOA attorney Greg Lubow, Esq.) will make it impossible for this hearing to proceed without adjournment to give time for the Boards to seek the advice of their respective counsels and advisors on the matters raised herein.

There are at least three fatal matters that require adjournment of this matter:

Matter 1) THE NOTICE OF HEARING SENT TO NEARBY AND/OR ADJACENT LANDOWNERS IS FATALLY DEFECTIVE AND REQUIRES AN ADJOURNMENT OF THIS PROCEEDING:

A) The notices mailed to adjacent landowners and posted on the inside of the Village of Hunter Hall fail to properly describe the subject parcels, and lack crucial language required to give adequate notice. The true and accurate notice as posted on the municipal websites describes the subject parcels (164.58, Block 6, Lots 4 & 5 as "TOTALLING 11.90 ACRES" [caps mine]). No such reference to the size of the lot (which would have set off all kinds of bells and whistles) appears in the notice actually sent. In addition, the true and accurate notice contains the language absent from the mailed and posted. After reciting the date time and location. the true notice contains the following language: "At such time, all persons interested in the matter shall be heard to consider whether the form of the Petition is satisfactory, whether the proposed annexation is in the overall public interest, and whether there are any issues related to environmental significance under the State Environmental Quality Review Act associated with the proposed annexation. Objections based upon any grounds regarding the form of the Petition [as set forth in General Municipal Law Section 705(l)(a), (b), (c) or (d)] shall, in addition to the presentation of any oral testimony thereon, be submitted in writing on or before the date of the hearing."

I am well familiar with the parcels in Block 6, know as Lots 4&5, as I owned them for many years and that they were created after survey work done by at different times by The Chazen

Companies, licensed engineers & land surveyors, Brooks & Brooks and deeds prepared and filed according to the survey descriptions by attorney Larry Gardner. Lots 4&5 are tiny strips of land, one that includes a portion of the highly contested road which parcel is partly in the Village and partly in the Town, and another strip located completely in the Town, for all times relevant to this matter, (including at the time of the filing of Mr. Chadock's petition with the Town Planning Board). In the event that Mr. Chadock attempts to claim that, through something like a lot line adjustment, the parcel that was located partially with the village somehow merged with 168.58, Block 6, Lot 3 and magically became a 11.90 acre parcel renamed named Lot 4, located wholly within the Town, that argument is specious, Furthermore if such an action were taken without proper notice and, upon information or belief, was an attempt to rename Lot 3 (on which Mr. Chodock has drilled his new wells) as Lot 4, such an attempt would be violative of several state and Municipal laws and regulations, as well as long-standing Public and Town Planning Board policy against Segmentation. To further buttress this argument, I went to the Village hall and asked to see a copy of the referenced map, and was told that it was not available. Then, I went to the Town Hall and, with the advice and assistance of the Town Assessor, looked at the large format tax maps and confirmed that the official documentation therein refer to lots. 4 & five as being the tiny strips as previously described. The Assessor the confirmed that the larger parcel was, in fact 164.58, Lot 3. This lot was not referenced in any version of the application for this proceeding. To illustrate the confusion that this possible maneuver caused, I aver and would testify under oath that I conferred with at least 6 people, and most of them believed that this hearing was about the small strips while only one or two references the large and controversial parcel containing Mr. Chadock's new wells, the purpose of which he has described variously to different people. In fact, I met personally with Mr Chodock and asked if I could see the engineering documents for the re-configured water system. His is replies included "no, you can see them after its built" and further, that he intended to convert somehow the existing wells and atmospheric reservoir for the sole use of his Hotel and other properties. This would be highly improper, and in violation of numerous State and regulatory body laws and policies. Furthermore, there is an equitable as well as a legal argument against this, as the ratepayers of Whistle Tree have contributed in the neighborhood of \$1,000,000 (one million dollars) over the years in the construction and improvement of the water facilities that currently constitute Whistle Tree's water system, pumps, well houses, controls, atmospheric reservoir and other valuable expenditures.

B) The mailed and posted notice is further defective in that omits the invitation to "all persons interested in the matter shall be heard to consider whether the form of the Petition is satisfactory, whether the proposed annexation is in the overall public interest, and whether there are any issues related to environmental significance under the State Environmental Quality Review Act associated with the proposed annexation. Objections based upon any grounds regarding the form of the Petition [as set forth in General Municipal Law Section 705(l)(a), (b), (c) or (d)] shall, in addition to the presentation of any oral testimony thereon, be submitted in writing on or before the date of the hearing."

There are serious issues related to SEQRA, the previous operating and permitting approvals of Whistle Tree Development Co, Inc., by the NYC Attorney General's office, DEC, DOH & PSC as well as a fatal flaw in Mr. Chodock's original petition to the Town Planning board.

First, I personally viewed Mr. Chodock's original application to the Town Planning Board and, upon information and belief, it contains a serious misstatement of fact that requires that this hearing be adjourned, that Counsel for the Town and/or Board members & the Town Supervisor examine said petition. The Planning Board's Site Plan Review Local Law of the Town of Hunter, NY has always expressly provided that an applicant fulfill all items on its checklist which states in substance that the applicant must, among other things, provide the "Description of the method of securing public water and location, design and construction materials of such facilities." In response to this requirement, Mr. Chadock answered to the effect, as I recall, that Whistle Tree would provide the water because the proposed project is within the service area of Whistle Tree. This statement was false when made, and to my knowledge remains false to this day or, at a minimum, incorrectly adhered to. As far as I know, I, as President of Whistle Tree, was the last person to apply for an expansion of the Whistle Tree service area. This was an exceedingly complex process, done with notice to all water customers and the opportunity right to be copied on all submissions and to be represented by counsel at any point, As far as I know, Mr. Chodock has complied with few if any of the relevant local and state provisions, and certainly not in notice to water customers. As noted above the Mr. Chadock has refused to show me the plans for Whistle Tree and refused point blank to answer my specific and detailed questions, including the name and address of his engineers and of the Licensed operator he is required by State law to hire and retain. He had continued the use of the previous Licensed Operator, Environmental Consultants, for a period of time, but fired them and has refused to provide the name of their replacement, nor allowed inspection of the records he is required by law to maintain regarding water flows, proposed improvements, etc..

In addition Mr. Chodock's actions are in direct and specific violation of numerous provisions by State authorities. The DEC and DOH approvals of the service areas were expressly conditioned on Whistle Tree fulfill its obligation reached after a mediation between Whistle Tree, Scribner Hollow and the HOA. The approvals were also conditioned on the express provision that the service area expansion be limited to the hotel then known as Scribner Hollow Lodge, and three additional homes (one of which has since been demolished). The wellhead protections mandated by the DEC required not just a 200' radius wellhead protection zone around the wells, but specifically that the road known as Town House access road (over which the HOA and I both have access easements), be well-maintained, including, specifically the provision that the Road shall be maintained by grading the road to the North and insuring that the drainage ditch be of adequate capacity and be maintained all the way to the culvert on the Northeast corner of the road.). The DEC specifically deferred to the results of a detailed, expensive engineering report, relevant excerpts are either attached hereto or will be available at the meeting, that was commissioned at the order of the Office of the NYS Attorney General, Deputy Attorney General Oliver Rosengart, which shows in detail in color photos with captions, how the road must be maintained by grading to the north, and that a swale must be installed above my driveway to

insure that any additional runoff be directed to the north ditch and not toward my driveway, which caused the severe erosion by the non-maintenance of the road by Mr. Chodock.

C) Given his refusal to obey specific instructions by several regulatory and law enforcement entities, his disregard of the obligations imposed on Whistle Tree when its service area was LAWFULLY expanded by the DEC and DOH to include the Hotel and houses, his non-cooperation with reasonable requests to review his engineer's work and plans, and disregard of provisions in Whistle Tree's SQRA permit application and the conditions on the permit, Mr Chodock simply cannot be trusted to fulfill his obligations under State and Municipal law. The adjournment of this 12/13/2023 proceeding for at least two months (given the intervening holidays) to allow all of these matters to be thoroughly investigated by counsel, and the referral back to the Town Planning Board for further consideration in light of what was, at least, his then-false (and likely current) Planning Board application statement that water would be supplied by Whistle Tree.

I believe that the only reasonable solution, in addition to the ones proposed elsewhere in this letter, is to require Mr. Chodock to form a Transportation Corporation, with appropriate Municipal successor and Bond in sufficient amount to guarantee the successor's ability to perform it's duties.

Mr Chodock and his engineers have been given originals or copies of every document referred to in this letter, as have the Scribner HOA. I personally met with Mr. Chodock and his engineers, transmitted these and one or two full file boxes of Whistle tree documents, which I know for a fact he treated as if they were unimportant.

I will attach and/or bring to the meeting as many of the referenced documents as possible. I would do more, but simply cannot, given the ridiculously short notice to prepare for this meeting.

If necessary or desirable I propose to meet with a mutually agreed neutral party to review originals and take and make copies of what ever relevant documents not provided, with the written guarantee that what I give this party will not be given to any other party, but rather copied (I suggest at the expense of Mr. Chodock), (I suggest Village Attorney Mr. Tal Rappleyea, or retired attorney and former Village and Town attorney Larry Gardner-or other person of such unquestionable stature bound by a professional code of ethics as suitable to meet with me and take documents for copying as provided above.) in as many counterparts as are required. I have given away every other copy of the documents referred to, and others that support my positions and simply cannot allow myself, or my friends at the HOA, to permanently lose control of the only lawful documents that can protect us and govern Mr. Chadock's lawless and wonton disregard for the laws and regulations he should be following..

I have worked on this letter for twelve hours. Please keep in mind that I have resumed the full-time practice of law with the Albany office of a state-wide firm, and will need to have the referenced meeting over a weekend or on a day that my employer can excuse me from work.

In conclusion, allow me to quote from the founding document of Whistle Tree and from the approval letter of now-deceased and well-respected DEC Engineer Suzanne Ports:

1) From the original Decision of the NYSDEC on January 19th, 1972 on an application from November 15th, 1971, its conditions and statutory determinations, for the approval of a source of water supply...and the construction of a water supply system:

"That said plans provide for the proper protection of the supply and the watershed from contamination of such supply, That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being givem to their present and future necessities for sources of water supply".

And from the letter dated January 28 2004 by the fondly remembered DEC engineer Suzanne Ports:

" The purpose of this application is to seek DEC approval to ratify historical approval by the Whistletree system to: a) Serve three single family residences, and to b) provide supplemental source of supply to Scribner Hollow Lodge....No additional allocation of water resources is requested."

That, my friends is it. No service are extension for upper property, no yurts, no additional drilling of wells. That is all Whistle Tree had permission to do without a full new service extension application on proper notice to Whistle Tree's customers.

Done.

Petitioner should submit a proper application on notice.

Respectfully Submitted,

Guy W. Chirico, Esq.

Greg Lubow states he is an Attorney representing 26 homeowners of the Scribner Hollow Homeowners Association. He states his concern was where the sewer line was going to go and adds that the map is missing what the Planning Board approved one year ago. He would like to know what the expansion plans are that will affect the 26 homeowners. He feels there is nothing that really describes the project and water is big concern. He feels it is premature to grant the annexation.

Supervisor Mahoney states the Planning Board will bring this to Greene County for a 239 Review, also they will complete SEQR. He adds that the Village of Hunter Planning Board and the Town of Hunter Planning Board will work jointly. He states he would like to keep the Public Hearing open for one month, do a 239 Review and SEQR in that time.

Mayor Papa asks if the sewer line location has been corrected and if the setback for the well location has been addressed.

Andy Deleo of Taconic Engineering states because of the way the property is arranged, the resolution is to encase the sewer line which has not yet been installed. He adds that the wellhead protection does come into play with NYSDOH, and Whistle Tree will remain as its own.

Councilman Semenza states this is not a completed project so no finite description of what is being built. He feels that the Town of Hunter needs to know if there is adequate sewer and water so existing customers don't get shortchanged.

Marc Czermerys states that the project has changed from what was approved by the Planning Board.

Marc Chodock states that everything they are building has been approved adding that from an environmental standpoint, the easier thing was to go to the Village, but he is fine if they must remain in the Town.

Supervisor Mahoney makes a MOTION to keep the Public Hearing open for one month to be revisited on 1/10/23 at 6:00 PM, and at that time the SEQR and the 239 Review will be completed. Seconded by Councilman Kukle.

Ayes -5- Noes -0-

Mayor Papa makes a MOTION to keep the Public Hearing open for one month to be revisited on 1/10/23 at 6:00 PM, and at that time the SEQR and the 239 Review will be completed. Seconded by Trustee Sommers.

Ayes -2- Noes -0-

Supervisor Mahoney makes a MOTION to pause the Public Hearing for this evening at 6:20 PM. Seconded by Councilman Semenza.

Ayes -5- Noes -0-

Corina Pascucci, Town Clerk, RMC

Town of Hunter