

STATE OF NEW YORK COUNTY OF ONONDAGA
 VILLAGE OF SKANEATELES ZONING BOARD OF APPEALS

 In the Matter of the Appeals of CEASE & DESIST
 letters by Village Code Enforcement Officer
 re: Rental of Dwelling Units for less
 than 30 day period at

6 Fennell Street
 15 Fennell Street
 46 East Genesee Street

PUBLIC HEARING in the above matter, conducted
 at the Skaneateles Community Center, 97 State
 Street Road, Skaneateles, New York before JOHN F.
 DRURY, CSR, Notary Public in and for the State of
 New York, on November 24, 2015, 8:15-10:35 p.m.

VILLAGE ZONING BOARD MEMBERS PRESENT:

CRAIG PHINNEY, Chairman
 CURT COVILLE
 LAWRENCE A. PARDEE, JR.
 DAVID BADAMI
 MICHAEL BALESTRA
 Dennis Dundon, ABA Clerk ddundon1914@gmail.com
 RICCARDO T. GALBATO, ESQ., Special Counsel
 71 Genesee St. Auburn, NY 13021
 rgalbato@galbatolaw.com
 BRODY D. SMITH, ESQ., Counsel to Village ZBA
 from BS&K One Lincoln Center bsmith@bsk.com.

ALSO PRESENT: John Crompton, Code Enforcement Officer

FOR THE APPLICANT: (Fingerlakes Luxury Homes)

MICHAEL A. FOGEL, ESQ., from Brown Sharlow
 Duke & Fogel, PC 621 W. Genesee St.
 Syracuse NY 13204 mfogel@bsdflaw.com
 Robert Eggleston, Architect
 Rick and Debbie Moscarito, Applicants



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Crompt

THE CHAIRMAN: We're here to consider the application of Fingerlakes Luxury Homes, Inc./Rick Moscarito to appeal a cease & desist letter issued by the Village Code Enforcement Officer for rental of a dwelling unit for less than a 30 day period at the property addressed as 6 Fennell Street in the Village of Skaneateles. First, this appeal is a Type 2 action under the SEQR. Just so we have that clear to begin with.

And I'm going to open this with allowing the Code Enforcement Officer to speak and bring us up to date as to what the situation is. If you would, please.

MR. CROMP: What I'll do is all my comments tonight will be pretty much for all three properties. Other than some minor date changes, there is a couple dates, information coming in, and information going out to the property owners and information coming in to me from the Complainants. But I'll tell

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Crompt

you what those dates are. Other than that all the information is the same for all three properties.

So I'll start by giving you a little timeline of what has transpired. In reading through, prior to all this happening and reading through the Code, I determined under Definitions in our local Code, in Dwellings, and I'll read it out to you. It says, "Any dwelling or structure or part thereof used and occupied for human habitation or intended to be so used. The terms dwelling, dwelling unit, one-family dwelling, two-family dwelling, multi-family dwelling and townhouse dwelling shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy of less than 30 days."

So prior to all this happening, my interpretation of that was, residences cannot be rented for a period of less

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Crompt

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than 30 days. So I'll just preface that

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by saying that. Then on let's see, bear

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with me, I've got a lot of paperwork

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here.

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On June 25th of this year, 2015, I

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received a formal complaint from a

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resident. And they gave me quite a few

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attachments that were off of the VRBO

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website and I believe Airbnb website of

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properties that were being rented in a

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residential and the C&D District, but

13

we're sticking right now with the D

14

District, that's what these three

15

properties are in. That was on July 25.

16

And then on July 30th, I received

17

another complaint, and virtually the

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same attachment off of those web sites,

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VRBO and Airbnb were attached.

20

And then in July 27th, I received a

21

letter with no attachments, and this was

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very specific to complaints at 6 Fennell

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Street. So then in speaking with

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Counsel Galbato and Village Attorney

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Mike Byrne, we drafted a cease & desist

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letter that went out to Mr. Moscarito and Fingerlakes Luxury for the three properties: 6 Fennell, 15 Fennell, and 46 East Genesee Street. And the dates of those letters were: August 5th, for 6 Fennell; August 7th for 15 Fennell and also August 7th, to 46 East Genesee Street. And I'll read the letter that went out on those properties.

"Village of Skaneateles Code Enforcement Office is in receipt of a specific complaint/complaints regarding short term vacation rental of your property for periods of less than 30 days. This is a prohibited use within the D District.

The Code Enforcement Office requires that you immediately cease & desist from the practice of short term vacation rentals. You have the right to apply for a Use Variance or Special Use Permit, depending on what District your property is in. But such relief cannot be presumed, and you must cease rental

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Crompt

activity unless and until you obtain such relief.

Failure to comply with the cease & desist order may result in further enforcement of the Village of Skaneateles. It may include a civil penalty of not more than \$100 per day for each day or part thereof that such violation continues, and/or a court injunction.

Please contact the Village Code Enforcement Office by e-mail at Rental Compliant VillageofSkaneateles.com or in writing for the application process and District criteria. Questions may be directed to John Crompt, Code Enforcement Officer, 685-2118." It's signed by myself. After that, after much discussion with residents and myself, and attorney Special Counsel, the Village decided to enact a moratorium September 1st.

So then on September 30th, letters went out to all property owners in the

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C and D district, and also the residential, which doesn't have a part to do the with this. On September 30th this letter went out to Mr. Moscarito and others.

"This is a follow-up letter to the cease & desist letter you received in early August 2015, and are in regards to short term vacation rentals in the C and D Districts. As you know, the Village Board enacted a moratorium until the end of 2015 in those above mentioned Districts. That moratorium said that any Special Use Permit applications to the Planning Board will be tabled and not enacted upon until the end of the moratorium.

Also, any possible enforcement against your property by the Code Enforcement Office are suspended during this period. If you have any of questions regarding this matter, please feel free to call me at 685-2118." And signed by myself.

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Crompt

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So after all these letters went out, Clerk Dundon and I went through all the files for 6 Fennell Street, 15 Fennell Street and 46 East Genesee Street in the Village. And we ascertained that no Special Use Permits were granted by the ZBA for any of these properties.

And also, I do want to bring up that in our Permitted Use Chart, if we go to the Downtown D District, and we go to hotels, motels, lodging, they all ask for a Special Use Permit.

And if we go to the interpretations of the Special Use Permit, the X, which marks Special Use Permit under those Districts, says the X symbol designates a conditional use, which is permitted only upon securing a Special Use Permit in each case from the Zoning Board of Appeals in accordance with Article 10 of this Chapter.

So that's where Dennis and I came up with, since that is written, and no Special Use Permits were granted by the

1 Fogel

2 ZBA, the cease & desist order needed to
3 stay in effect. Any questions at all?

4 QUESTIONING MR. CROMP BY MR. BALESTRA:

5 Q. John, you said you did a search for a
6 Special Use Permit. There are no Special Use
7 Permits granted for any of the three properties
8 that you mentioned?

9 A. Correct.

10 Q. For any use, any conditional use
11 whatsoever?

12 A. That's correct, no special use whatsoever.

13 THE CHAIRMAN: Any questions from
14 the Board? All right, the Applicant.

15 MR. FOGEL: Yes.

16 THE CHAIRMAN: It is certainly your
17 time to speak. Please, if you would.

18 MR. FOGEL: Good evening, my name is
19 Mike Fogel, I'm an attorney with Brown,
20 Sharlow, Duke and Fogel, I'm Counsel for
21 the Appellants, Fingerlakes Luxury
22 Homes, Inc., and Richard Moscarito.

23 We're here tonight before the ZBA
24 because we've appealed the cease &
25 desist orders that Code Enforcement John

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Fogel

Cromp issued the Fingerlakes Luxury Homes properties, which is located at 6 Fennell Street, 15 Fennell Street and 46 East Genesee Street, for allegedly illegally operating short term rentals at the properties.

Through our appeal we're requesting tonight that the Zoning Board grant the appeals and annul and vacate the cease & desist orders. Because Appellants, contrary to the cease & desist orders, are not operating illegally for the reasons that I'm going to get into in a few minutes here.

I do want to address just a couple preliminary items before I get into the merits of our appeal. First of all, I've explained, there are three separate cease & desist orders for the three properties. We did submit three separate notices of appeal, so that there are three separate hearings scheduled for tonight on each appeal.

But our arguments and our position

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Fogel

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applicable to all three appeals are

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really inner-woven and they really can't

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be broken out, they can't be

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compartmentalized. The arguments and

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their relevant factual background really

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overlap. So I'm just going to go

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through our position with respect to all

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three appeals. I recognize that only

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the hearing for 6 Fennell Street is open

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at the moment, but instead of having to

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repeat the same arguments on the record,

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I'm just going to request that all of

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the arguments and our statements in

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advance of the appeal of 6 Fennell

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Street, just be incorporated into the

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subsequent hearings.

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And if you want to make a note when

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each subsequent hearing is opened that's

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fine, willing to do that, but just for

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the sake of brevity.

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THE CHAIRMAN: That's very good.

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MR. FOGEL: And in appreciation of

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everyone's time. So another preliminary

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item, I did submit a letter brief

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Fogel

tonight from my office setting forth
factual background and our legal
arguments with respect to the appeal.
There was a number of exhibits that are
relevant to the appeal. Also submitted
an affidavit from Mr. Moscarito, the
president of Fingerlakes Luxury Homes,
setting forth some of the relevant
background, and also some exhibits that
have been in support of the appeal.

So I would ask that those
submissions be incorporated into the
hearing record, again, for each hearing
and for each appeal. That way we don't
have to worry about if there is a full
developed record for each appeal.

Another preliminary matter, we did
hire a court reporter to take a verbatim
record of tonight's hearings. Wasn't
sure of the recording capabilities at
this alternative location, so he's going
to be providing a transcript, which
we'll provide a copy to the ZBA to
include also in the record of tonight's

1 Fogel

2 hearing.

3 So with that background and the
4 housekeeping items kind of out of the
5 way, I'm going to turn to the merits of
6 our appeal. Obviously we believe that
7 the cease & desist orders were improperly
8 issued, and should be annulled. I'm
9 going to go through some of the
10 applicable factual background, because
11 it's really important, and our argument
12 really hinges on the history.

13 The history applicable to these
14 hearings really goes well beyond this
15 past summer to the events that Mr. Crompton
16 recited. Really goes all the way back,
17 I'm going to start back to 2009, and
18 I'll try to move through quickly, I
19 won't belabor the point too much.

20 But back in 2009, the Appellants
21 purchased the property located at 6
22 Fennell Street. Initially Mr. Moscarito
23 and his family were going to live at 6
24 Fennell Street during the summer months.
25 They were going to not stay in Owasco

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Fogel

Lake, they were going to move to the 6 Fennell Street property. And that is set forth in the initial application to the Board of Trustees, that initial intent.

The Appellants did apply to the Village for requisite permits to reconstruct the property in 2009. They were issued the necessary approvals in 2010. The majority of the construction work that's been performed at 6 Fennell Street took place during the remainder of 2010.

While the construction was ongoing in 2010, the Moscaritos did decide that they were not going to spend the summers at 6 Fennell Street, instead they were going to remain during the summers at the Owasco Lake house. Because of that change in their intent they did put 6 Fennell Street up on the market for sale. The property sat on the market, they were unable to sell it.

So Mr. Moscarito decided that he

1 Fogel

2 really wanted to have the option to be
3 able to rent 6 Fennell Street for
4 periods of less than 30 days. So at
5 that time they wanted to make sure
6 obviously that they obtained any and all
7 necessary permits necessary to rent the
8 property for periods of less than 30
9 days. Mr. Moscarito is a responsible
10 businessman and a responsible business
11 owner, and wanted to make sure that all
12 of his plans were well known to the
13 Village. He wanted to make sure that he
14 got any approvals that may be necessary
15 to rent the property for periods of less
16 than 30 days. He didn't want to run
17 into a situation where the Village might
18 come back later and question why he was
19 renting the property for less than 30
20 days.

21 So in February 2011, they did apply,
22 the Appellants did apply to the ZBA for
23 a Special Use Permit to convert 6
24 Fennell to "hotel." The definition
25 didn't really seem to fit. Didn't

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Fogel

really seem to capture exactly what Mr. Moscarito wanted to do with the property. But again, they wanted to be up front, they wanted to be above board, and they wanted to do things legally. So they did submit the Special Use Permit application. The narrative that accompanied the application was crystal clear. Clearly states that the Moscaritos intent was to rent the property for periods of less than 30 days.

On March 3rd, Mr. Moscarito's representative, Mr. Bob Eggleston, appeared before the Village Planning Board to discuss that application. The Planning Board needed to make a recommendation back to the ZBA, as you're aware.

At that meeting Mr. Eggleston explained the nature of the application. Explained that the intent was to rent the property for periods of less than 30 days at 6 Fennell Street.

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But even the Planning Board, and you can see it in the minutes, and I've attached a copy of the minutes to our submission as Exhibit B. If you look at the minutes from March 3, 2011, it's clear that the Planning Board started to question whether any approval was required in order to rent the property for periods of less than 30 days.

The Planning Board adopted a motion, recommending that the application be sent on to the ZBA, without a formal recommendation, but instead recommending that to be determined whether any approval was actually necessary for the Appellant to rent the property for less than 30 days.

A few weeks later, on March 22, 2011, Mr. Eggleston appeared again on behalf of the Appellants at a duly noticed public hearing held by the ZBA to discuss the application to rent the property for periods of less than 30 days or to convert it to a hotel. And

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Fogel

the purpose really of the hearing was to resolve the question of whether an approval was needed to rent the property for periods of less than 30 days.

At this public hearing Mr. Eggleston again emphasized what was set forth in the application narrative. He emphasized that the nature of the application was to rent the property for periods of less than 30 days. There was a discussion amongst ZBA Board Members, Mr. Eggleston, and the ZBA Attorney, specifically regarding the question of whether a Special Use Permit was necessary to rent the property for periods of less than 30 days.

During the public hearing testimony was also received from one of the neighbors, who resided at I believe 29 Jordan Street, which is in proximity to 6 Fennell Street. That testimony included commentary about the ability to rent the property for less than 30 days. The testimony from the neighbor clearly

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Fogel

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establishes that everyone knew in the

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room exactly what the Moscaritos intent

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was. And that was to rent the property

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for less than 30 days.

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At the conclusion of the hearing the

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ZBA made the following determination by

8

a 4-0 vote, and a copy of the minutes,

9

if you want to take a look at them, is

10

included in our submission as Exhibit C.

11

It says, "Based on the application in

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writing and the architect's

13

presentation, it is our determination

14

that this is a single family residence,

15

which is permitted in Downtown D."

16

Now, that was the motion, but you've

17

got to keep in mind the context in which

18

that determination was made. It's clear

19

that what the intent was as set forth in

20

the narrative. It's clear that given

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that context and given the discussion

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and given Mr. Eggleston's presentation

23

of the application, along with the

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narrative, that the ZBA determined that

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a Special Use Permit for a hotel was not

1 Fogel

2 necessary for the property and that the
3 Appellants could rent the property for
4 periods of less than 30 days. It seems
5 very clear based on my read of the
6 minutes.

7 Now that ZBA determination wasn't
8 challenged by any aggrieved party.
9 Pursuant to Village Law, a ZBA
10 determination has to be challenged
11 within a 30 day period, which is a 30
12 day statute of limitations. That
13 determination was not challenged. As a
14 result it became final and binding on
15 the ZBA.

16 Now, subsequent to the ZBA
17 determination the Appellants moved
18 forward in justifiable reliance on the
19 determination, and in good faith,
20 proceeded to finish the remaining
21 improvements at 6 Fennell Street. And
22 they began to market, advertise and
23 promote the property as a short term
24 rental and they began taking bookings
25 for the property.

1 Fogel

2 There is information set forth in
3 Mr. Moscarito's affidavit, specifically
4 stating how much the Appellants have
5 spent on capital improvements to 6
6 Fennell Street. Now admittedly most of
7 those expenses were made before the ZBA
8 determination. There were expenditures
9 and improvements made after the
10 determination, however. And since 2011
11 the Appellants have spent approximately
12 \$17 1/2 thousand to market, advertise
13 and promote 6 Fennell Street as short
14 term rental, again in reliance on the
15 ZBA determination.

16 I'm going to move past 6 Fennell
17 Street and talk a little bit about 15
18 Fennell Street. A few months later, in
19 August of 2011, Appellants purchased 15
20 Fennell Street with the intention of
21 renting it for periods of less than 30
22 days, pursuant to the earlier ZBA
23 determination. 15 Fennell Street is
24 also located in Downtown D zoning
25 district, and the Appellants justifiably

1 Fogel

2 relied on that ZBA determination in good
3 faith when they acquired 15 Fennell
4 Street. As set forth in Mr. Moscarito's
5 affidavit, he would not have purchased
6 15 Fennell Street but for that ZBA
7 determination.

8 So they reasonably concluded in good
9 faith that they didn't have to return to
10 the ZBA for a determination as to
11 whether they needed a permit to rent the
12 property for less than 30 days. The
13 property similarly situated to 6 Fennell
14 Street, included within the Downtown D
15 zoning district. And just a few months
16 earlier the ZBA determined that for such
17 a property that a Special Use Permit was
18 not required to rent the property for
19 periods of less than 30 days.

20 I submit to the Board that no
21 reasonable person in Mr. Moscarito's
22 shoes, would have thought it was
23 necessary to go back to the same ZBA who
24 just a few months earlier had made the
25 determination, which at that point had

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Fogel

become final and binding, because more than 30 days had passed without it being challenged. And could reasonably determine that there is no reason to go back to the ZBA, you just decided the same issue, the ZBA at the time just decided the issue.

In reliance on that determination, in addition to the cost of purchasing 15 Fennell Street for approximately \$225,000, the Appellants have spent approximately \$248,000 on capital improvements to 15 Fennell Street, and have spent an additional \$21,000 to market, advertise and promote 15 Fennell Street as a short term rental. And the information supporting that is attached to Mr. Moscarito's affidavit.

With respect to 15 Fennell Street it's also important to note that while in front of the Board of Trustees for Critical Impact Permit, it was discussed and Mr. Eggleston indicated that plans, Mr. Moscarito's plans were to rent 15

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Fogel

Fennell Street. You can review a copy of the minutes also attached to our filing as Exhibit D.

Moving forward to 46 East Genesee Street, that property was purchased in May of 2012 for approximately \$855,000. Again, in reliance on the earlier ZBA determination that they could rent it for periods of less than 30 days.

Now, I do want to point out that by taking the position that we're taking, we're not suggesting that anybody within the Village who's in Downtown D could rely on that ZBA determination. We're taking the position that that determination was limited to Fingerlakes Luxury Homes and Mr. Moscarito. So I don't want to give the impression that we're suggesting that the ZBA determination is controlling for everyone. It's specific to that determination with respect to Mr. Moscarito's properties.

So in short, Appellants have

1 Fogel

2 justifiably relied on the ZBA
3 determination in good faith. And over
4 the past four years have expended
5 substantial sums of money and engaged in
6 substantial construction, as necessary,
7 to market and promote the property as
8 short term rentals. They've established
9 vested rights on all three properties
10 based on the ZBA's determination. And
11 respectfully submit that Appellants are
12 not renting the property illegally, and
13 the cease & desist order should be
14 annulled and vacated for all three
15 properties.

16 I do want to point out some of the
17 legal points, and they're set forth in a
18 brief, but just for purposes of
19 preserving them on the record I just
20 want to point out a few things. That
21 is, first of all that it's well settled
22 that the ZBA determination, the ZBA
23 Board is a quasi-judicial entity, and
24 their determinations are conclusive,
25 final and binding, and preclude the same

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Fogel

Zoning Board or even a Court from re-litigating the same issues that had been previously determined or could have been determined by the Zoning Board at the time.

And I cite a number of cases in our brief. Different situations, but similar circumstances. And very clear that the Courts have held that the ZBA determination, such as the one from March 2011, is final and binding, it can't be undone, it can't be modified or it can't be revoked or vacated.

Now, the Village, kind of under the impression may take the argument that that ZBA determination was issued in error, and you know, sorry we made a mistake, but the fact of the matter is the case law is clear that such a ZBA determination such as the one made in March of 2011 is final and binding.

Now, there are cases out there that suggest that mere clerical errors or administrative errors that result in

1 Fogel

2 issuance of building permits can't estop
3 a Village from enforcing the zoning.

4 There is no question there is cases out
5 there to that effect. But that they're
6 very different from the circumstances
7 here. And the Courts have recognized
8 the distinction between a clerical or
9 administrative error and a determination
10 that arises out of a ZBA hearing
11 quasi-judicial determination. They're
12 very clear, and suggest a review of the
13 cases that are set forth in our brief.

14 And you'll see that those cases are
15 clear that a Zoning Board's
16 determination following the quasi-
17 judicial proceeding is final and binding
18 and precludes re-litigation of the
19 issues. And that's exactly what's
20 unfortunately going on here. That we're
21 trying to go back in time and re-litigate
22 issues that have already been determined
23 by a prior ZBA. I think there are a few
24 of you who maybe were around in 2011,
25 but are trying to go back and unwind

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Fogel

that. And it's clear from the case law that that can't be done.

So I just want to talk about the ZBA determination again and why it's final and binding. The determination was reached at a duly noticed and held public hearing. At the public hearing the ZBA considered the narrative submitted by the Appellants which clearly stated that the Appellants intent to rent the property at 6 Fennell Street for periods of less than 30 days.

At the ZBA hearing there was also testimony from the Appellants representative further emphasizing that Appellants desire was to rent the property for periods of less than 30 days.

At the public hearing the ZBA also considered the testimony of a neighbor who commented on the Appellants intent to rent the property for less than 30 days. So there is no question this was not something that was a secret or was

1 Fogel

2 done under color of darkness. This was
3 something that was fully explained, and
4 vetted and litigated in front of the ZBA.

5 I already went through the fact that
6 after a hearing all that evidence, after
7 considering the narrative, after
8 considering the testimony of the
9 appellant representative, and after
10 hearing the testimony of one of the
11 neighbors to the property, the ZBA
12 determined that no permit was required.

13 Based on that determination, again,
14 not trying to repeat myself, but it's
15 important to emphasize these points, the
16 Appellants reasonably relied on that
17 determination in good faith. They tried
18 to come in and get a Special Use Permit,
19 even though it didn't seem like it
20 really applied. And they were told that
21 they didn't need a permit to do what
22 they wanted to do with the property,
23 which was rent it for periods of less
24 than 30 days.

25 So as a matter of fundamental

1 Fogel

2 fairness and basic constitutional
3 principles, the Appellants are entitled
4 to continue to rely on the ZBA
5 determination to operate 6 Fennell Street,
6 15 Fennell Street and 46 East Genesee
7 Street for short term rentals.

8 Just want to emphasize that these
9 properties are booked for stays through
10 the end of 2016. If the cease & desist
11 order is upheld the Appellants will have
12 to refund all those deposits, and their
13 business reputation will take a major
14 hit. And that's the one element of
15 damages that Appellants would suffer.
16 It's really hard to quantify, but
17 obviously it would hurt their business.

18 So the end result of all this, of
19 this whole history, my presentation and
20 the legal arguments that are set forth
21 in our brief, that Appellants have
22 secured the right to continue to rent
23 their properties for periods of less
24 than 30 days. And to rule otherwise
25 would deprive Appellants of those

1 Fogel

2 rights, would violate basic
3 constitutional principles and would
4 cause substantial damages and harm to
5 Appellants. For these reasons we ask
6 that you annul the cease & desist orders.

7 I do want to point out that the
8 moratorium, as you know, there is zoning
9 proposals that are out there with
10 respect to short term rentals. There is
11 a moratorium in place that's supposed to
12 stay enforcement. We heard from the
13 Code Enforcement Officer tonight. We're
14 obviously going forward with this, with
15 the letter, kind of under an objection,
16 under a reservation of rights, because
17 it seems like an enforcement hearing to
18 me. But we're willing to go forward,
19 present our arguments kind of under a
20 reservation of rights. But I just
21 wanted to raise that in closing. And
22 that's all we have.

23 THE CHAIRMAN: Thank you.

24 MR. BADAMI: May I start? Thanks
25 for making that complete overview of

1 Balestra

2 statement with me. If you would like,
3 that's on page 6.

4 MR. BALESTRA: Let me jump in also.
5 Move down a couple sentences, this is
6 important for what's not part of the
7 motion, not what made it into the
8 motion. Battle recites: "Based on the
9 application in writing and the
10 architect's presentation, it is our
11 determination that this is a single
12 family residence." Member Crompt said:
13 "And may be rented out..." The Acting
14 Chairman said: "No, it can be done with
15 anything else you can do with a single
16 family residence.

17 Member Crompt said: "Which is
18 permitted in Downtown D." They
19 expressly did not decide to determine
20 whether or not this could be rented out
21 for less than 30 days; didn't make it
22 into the motion.

23 MR. FOGEL: Talking about --

24 MR. BADAMI: Do you want to respond
25 to that one?

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Fogel & Board

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MR. FOGEL: Talking about

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specifically citing the application

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narrative, it's clear that based on that

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interpretation of the narrative, which

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it's clear that they're going to rent

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the property for less than 30 days.

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That by making the determination, based

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on the narrative and based on

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Mr. Eggleston's presentation, which is

11

crystal clear in here --

12

MR. BADAMI: Your position is just

13

because it's in the application it's

14

clear and it was approved on that basis.

15

This says exactly the opposite. I'm not

16

persuaded by your argument at all.

17

MR. FOGEL: Well, I think it's clear

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that based on the application writing,

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architect's presentation, it's our

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determination this is a single family

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residence, which is permitted in

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Downtown D. The preceding discussion is

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all about the fact that it can be rented

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for periods of less than 30 days.

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MR. BADAMI: No, it's not. I don't

1 Fogel & Board

2 agree with your conclusion. I think
3 it's exactly the opposite. The Board
4 said on three separate occasions in this
5 document that we don't have the
6 jurisdiction to determine the rental
7 period. And your characterization, and
8 I'll refer to your letter of November
9 24, 2015, in your preliminary statement,
10 where you state that the ZBA approved
11 the determination, including a period of
12 less than 30 days was permissible as a
13 right. Which is not what the
14 determination stated.

15 And I understand you're trying to
16 say it was inferred. I'm trying to tell
17 you that based upon my reading of what
18 occurred it was specifically rejected.
19 I'm asking you to reconcile that for me.
20 There is specific language here which
21 has just been cited which refutes your
22 position.

23 MR. FOGEL: I don't think it does.
24 I think it's clear that the discussion
25 was based on the narrative and based on

1 Fogel & Board

2 the intent of rental property for less
3 than 30 days. The whole discussion was
4 about whether or not a Special Use
5 Permit was required to do what was
6 requested in the narrative, which was to
7 rent the property for periods of less
8 than 30 days. I'd like, I'd prefer to
9 hear from one of the ZBA members who was
10 present back in 2011. Maybe they can
11 shed some light on exactly what the
12 issue was that was being decided. To me
13 it was clear that my client --

14 MR. BALESTRA: If you wanted
15 clarification what was decided in 2011,
16 you should have made a motion for a
17 re-hearing or for clarification on what
18 was said back in 2011.

19 MR. FOGEL: There was no need to
20 clarify, it was very clear.

21 MR. BALESTRA: When I look at this,
22 it's like a pile of goo, I can't rely on
23 this at all let alone justifiably. It
24 doesn't say what you're saying it says.
25 It simply doesn't say it. It says this

1 Fogel & Board

2 is a single family residence, you can do
3 what you can do in a single family
4 residence. To say that you justifiably
5 relied on that to mean you can rent it
6 for less than 30 days or do anything
7 else, I don't know, I don't get it.

8 MR. BADAMI: I don't see any
9 language to that effect in here. In the
10 actual determination, I don't see that
11 language. I understand you're saying in
12 the application that was presented.

13 MR. FOGEL: The determination was
14 based upon the evidence and the
15 testimony that was presented.

16 MR. BADAMI: The determination was
17 based on what the ZBA considers, per the
18 Code, not taking -- as a matter of fact
19 it rejects some of the assertions that
20 were in the application. So you can't
21 just say we applied for this, it was in
22 the application, and everything we
23 applied for was determined by the Board.
24 That simply is not true.

25 MR. BALESTRA: I'm not persuaded

1 Fogel & Board

2 that that determination was as you say,
3 and I think that what we need to do
4 tonight is to determine what the Code,
5 as written, says and means as of
6 November 24, 2015.

7 MR. BADAMI: If anyone who was here
8 during that would like to.

9 THE CHAIRMAN: Obviously that's me
10 that's being quoted as Acting Chairman
11 Phinney. Hard to say I wasn't at the
12 hearing.

13 MR. BADAMI: Wasn't your twin.

14 THE CHAIRMAN: Wasn't my twin. Each
15 time you're honing down to the fact it
16 was a single family residence. And we
17 determined early that it was not a
18 hotel. And because it was a single
19 family residence, we referred back to it
20 not once, twice, but three times, to
21 make sure that was clear, even right
22 down to the end of the meeting with
23 having Bob have to regurgitate once
24 again that this is a single family
25 residence.

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So I would say our intent there was to clarify right from the beginning at that point. I can't speak for Larry, he was there also. But I would say the record is very clear from our determination as to what we were thinking at that time. Because we had doubts about whether it could be used as a hotel at that particular point in time. So as I recall, again, to the best of my recollection on that. So, Larry?

MR. PARDEE: I concur.

MR. EGGLESTON: I'm Bob Eggleston, architect, I happened to be there also. I think one of the things that I --

MR. GALBATO: Mr. Chairman, you haven't opened up the public hearing yet.

MR. EGGLESTON: Speaking on behalf of the applicant --

MR. FOGEL: I think you did open the public hearing.

THE CHAIRMAN: No, not yet, I specifically have not. We were allowing

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Eggleston

you to speak and to get all your points across before we did that.

MR. FOGEL: I thought you read out the notice.

MR. GALBATO: So if Bob is speaking on behalf of the Applicant as well, that's fine.

THE CHAIRMAN: As long as you're doing that, that's fine.

MR. EGGLESTON: Sure, Bob Eggleston, architect for Moscarito. As stated, I was there. I think my impression, what I took away from that meeting, what I took away from the Planning Board meeting, was that first of all, the Planning Board had a hard time with the definition of hotel.

I told Rick Moscarito, if he wanted to rent it out short term he needed to apply for a transient use, which looking at the options was hotel, motel, lodging. We felt hotel was the closest in definition.

If you look at the definition of

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Eggleston

hotel, it only talks about transient accommodations that have a common entrance door, okay? That's all it talks about architecturally. It says you may, but you don't have to have bars and shops and restaurants and other amenities. You may, but it's not required.

Also, historically in the Village I personally have been involved in the approval of at least three other hotels, boutique hotels if you consider it, which have limited number of rooms, are very small in nature. And a lot of them are homes that have been converted over from single family residence into hotels, transient lodging.

There is the Arbor House, which initially was five bedrooms in a traditional house. There is the Skaneateles Boutique Hotel, by Curt Feldman, that again is with six but changed to five bedrooms and an office for the hotel management. And then

1 Eggleston

2 there is Rich Charles, who has one room
3 at 39 Jordan Street which is a one room
4 hotel.

5 I think, my sense was that the
6 Planning Board was having a hard time
7 getting a handle on the fact that, you
8 know, a hotel is a Sherwood Inn or, you
9 know, Holiday Inn or something like
10 that. Where the definition doesn't
11 preclude that. So I found it odd the
12 way that it proceeded. That's why I
13 kept asking, okay, if it's a single
14 family house, we still want to rent it
15 out short term.

16 And that's why I kept questioning it
17 at the end to confirm that we can rent
18 it out short term as a single family
19 house. So that was -- that was the
20 nature of that page 5 and 6 on the
21 testimony of the minutes.

22 QUESTIONING MR. EGGLESTON BY MR. BADAMI:

23 Q. Bob, don't go anywhere. I understand
24 that because it's clear you did ask that several
25 times, but would you not agree that you received

1 Eggleston Q&A

2 an answer on that several times as well?

3 A. I was getting the impression again, not
4 in writing, I was getting the impression, go ahead
5 and rent it, we don't have jurisdiction. And
6 maybe that's a mistake. Because it's in the
7 zoning law as one looks, that it's not to be for
8 transient use.

9 Q. But the answer each time to your
10 question was, either we do not have jurisdiction
11 on that, the answer is no, it can be done with
12 anything else you can do with a single family
13 residence, that's twice. And another time it says
14 we do not have jurisdiction on the rental, period.
15 So I understand what you're asserting, I just
16 don't understand how you came to that conclusion.

17 A. They never said you cannot rent it out
18 short term.

19 MR. BADAMI: They never said you
20 could.

21 MR. FOGEL: There is also the
22 discussion here about the ability to
23 rent single family dwelling. Number of
24 days, weeks, months, short term lease,
25 long term lease. Rent it as a single

Eggleston Q&A

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2 family dwelling, whether it's in
3 property Downtown D or A1, A2, are in
4 the zone. Obviously we're focused on
5 the Downtown D aspect. But if what
6 you're saying is right, then why didn't
7 the Board deny the Special Use Permit
8 for a hotel?

9 THE CHAIRMAN: Because we never got
10 to the point where they applied for
11 Special Use Permit for the hotel, having
12 designated as a hotel.

13 MR. FOGEL: Special Use Permit was
14 applied for in February 2011. That's
15 why they were in front of the ZBA.

16 THE CHAIRMAN: Determined it's not a
17 hotel.

18 MR. BALESTRA: I think what they
19 did, you interpreted the Code and
20 determined that it's not a hotel. If
21 it's not a hotel, then what is it?
22 Right now it's a single family dwelling.

23 MR. FOGEL: The determination is
24 that --

25 MR. BALESTRA: I'm trying to finish,

1 Fogel & Board

2 and you hired a stenographer to keep a
3 clear record. If it's not a hotel, then
4 it's currently a single family dwelling.
5 Then it's either, you either make it
6 something else or it's going to remain a
7 single family dwelling under our Code.
8 If the Code does not provide for a
9 specific use, if you want to use it as
10 something that's just not in the
11 definitions, it's prohibited. So I
12 think all that they determined here, is
13 it's, in their opinion it wasn't a
14 hotel, period. It's a single family
15 dwelling and you can use it as a single
16 family dwelling.

17 MR. FOGEL: Obviously, we're --

18 MR. BALESTRA: If you read the
19 motion that was voted on and passed, I
20 don't know how you can conclude anything
21 else.

22 THE CHAIRMAN: I'll quote that.

23 "Based on the application in writing in
24 the architect's presentation, it is our
25 determination that this is a single

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family residence which is permitted in
Downtown D." That was the resolution,
period. That's the resolution.

MR. FOGEL: Please keep in mind that
the application was for a hotel. That's
why that hearing was being held. The
Applicant was told that, no, this is not
a hotel, it's a single family dwelling.
You don't need a Special Use Permit to
be able to rent the property for less
than 30 days.

MR. BALESTRA: That's not what they
said.

MR. FOGEL: It's implicit in the
decision.

MR. BADAMI: It's not implicit,
exactly the opposite.

MR. BALESTRA: If I was going to
justifiably rely on an argument that
it's implicit in the decision, I can
guarantee you I would have wanted a much
clearer decision. If a Judge gave me
that decision I would make a motion for
the Judge to give me a clearer decision.

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2 It's just not there. You're reading it
3 into the motion, it's just not there.

4 MR. FOGEL: I think it's based on
5 the totality of the circumstances, the
6 application narrative and the discussion
7 in the minutes, the discussion in the
8 Planning Board minutes, everybody knew
9 what the Applicant's intention was. It
10 was to rent the property for less than
11 30 days. They had submitted an
12 application for a hotel for that very
13 use. They were told this is not a
14 hotel. You do not need Special Use
15 Permit for a hotel to do that.

16 MR. BADAMI: I don't see that. Show
17 me where it says what you said.

18 MR. BALESTRA: They said it's not a
19 hotel. I don't see anywhere it says you
20 don't need a Special Use Permit.

21 MR. FOGEL: By making the
22 determination based on the narrative,
23 which was to rent it for less than 30
24 days, by acknowledging that, by saying
25 it's not a hotel, they were explicitly

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2 saying that. They're making a
3 determination implicitly that we do not
4 need a Special Use Permit in order to do
5 what you're intending to do as set forth
6 in the narrative, and as Bob explained,
7 and as everyone in the room at that time
8 didn't understand, which was to rent the
9 property for periods of less than 30
10 days.

11 MR. BADAMI: But that flies in the
12 face of the statement by this gentleman
13 right here, that no, it can be done with
14 anything else you can do with a single
15 family residence.

16 MR. FOGEL: Which there is other
17 areas in the minutes where the
18 discussion is that you can rent a single
19 family dwelling for any period of time,
20 30 days, less than 30 days, weekly.

21 MR. EGGLESTON: You don't have
22 jurisdiction over that.

23 THE CHAIRMAN: That's correct, the
24 Code Enforcement Officer does.

25 MR. BALESTRA: I'll say this, there

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was a half of a suggestion to add into the motion, per Mr. Eggleston's request quite frankly, a finding about rental periods. And it never made it in. And no one asked that it go in.

MR. FOGEL: But when they were talking about specifying a specific rental period, a week, an overnight, a month, the only determination was that we're not going to specify a rental period. But we're saying that based on the application, that we submitted you can rent it for less than 30 days without it having to be considered a hotel.

MR. BADAMI: That language is not here.

THE CHAIRMAN: My thought on that would be that if that was the case, and you were going to be able to do whatever single family residence allows you to doing, then it falls directly and specifically back to the wording in the Code, not into an implied or exclusive

1 Fogel & Board

2 suggestion as to what it might
3 mysteriously mean.

4 I think that in that situation, if
5 you're saying anything a single family
6 residence can do, go to the Code. What
7 can a single family residence do? Oh,
8 it can't do that in that area. So
9 that's the way we looked at it.

10 MR. FOGEL: If that was the case
11 then the Board should have said, okay,
12 we're going to consider your application
13 for a hotel use. If you can't rent it
14 for single family dwelling, then why was
15 the Applicant told it didn't need a
16 Special Use Permit?

17 MR. BADAMI: He was told the
18 application presented was not a hotel.
19 It was rejected, that it was not a
20 hotel. It didn't meet the criteria for
21 a hotel.

22 MR. FOGEL: I understand that, but
23 the application is clear that the intent
24 was to rent the property for periods of
25 less than 30 days.

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MR. BADAMI: You could have said, I intend to rent it to the cow on the moon, what difference does that make? That was not the determination as a result of hearing the narrative that was approved.

MR. EGGLESTON: So what would it be?

MR. FOGEL: I'm agreeing, the special use for the hotel wasn't approved. The problem was that the Applicant was told that you don't -- it isn't a hotel, what you're proposing to do isn't a hotel, you don't need a Special Use Permit, you can do it.

MR. BADAMI: You were told it wasn't a hotel. The second part of your statement was never said.

MR. BALESTRA: Frankly he was just told it was a single family residence. All of this previous five pages before the motion, none of that really made it into the motion. And you're trying to say that it did, and it just didn't. That's why we make motions. That's why

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2 we make motions that specifically set
3 forth what's being decided. A specific
4 motion was made. That based on the
5 application, it's our determination this
6 is a single family residence which is
7 permitted. If that motion wasn't good
8 enough, if you wanted more, if you
9 wanted further clarification or rather
10 the Applicant did, it should have been
11 requested at the time. But I don't get
12 there reading the last three lines of
13 these minutes. I'm not persuaded.
14 Frankly I'm not going to go around and
15 around on this anymore.

16 MR. FOGEL: I just don't see
17 respectfully, how you parse out the
18 language about as set forth in the,
19 based on the application in writing and
20 architect's presentation, which is
21 clearly set forth that the plan and the
22 Applicant's intent is to rent the
23 property for less than 30 days, how you
24 carve that out of the motion.

25 MR. BALESTRA: I don't think it's

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2 carving anything out. What if the
3 Applicant said, I want to run this as a
4 funeral home and rent it out for less
5 than 30 days. I guess in some respects
6 that's a weird example, but I'll stick
7 with it. And the Board said, well,
8 that's not a funeral home, it's a
9 dwelling. Same thing we're doing.

10 You rely on that and say, oh well,
11 then that means I can rent it out for
12 less than 30 days? The Board said what
13 you applied for was not appropriate.
14 And frankly, I think, frankly, we all
15 agree, that the Board, that do we all
16 agree that you cannot rent a single
17 family dwelling for less than 30 days in
18 the definition?

19 THE CHAIRMAN: It's the definition
20 of the Code.

21 MR. FOGEL: The question is whether
22 the ZBA determination found that, not
23 what -- that's what we're here today to
24 talk about.

25 MR. BALESTRA: But they didn't

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decide that, they just said it wasn't a hotel. Whether or not that was right or not, I don't know. All they said was its not a hotel, it's a single family dwelling. They didn't say that you can use it for less than 30 days, didn't say that you can conduct funerals there, they didn't say anything else.

MR. FOGEL: I don't want to keep going around and around.

MR. BALESTRA: Me either.

MR. FOGEL: We respectfully disagree. Our contentions and our arguments are set forth on the record and set forth in our submissions to the Board. And I guess we'll see where we go from here.

MR. BALESTRA: You now agree that -- do you agree with the Code Enforcement Officer's statement, that no Special Use Permit has been granted for any of these properties?

MR. FOGEL: No Special Use Permits have been granted.

MR. BALESTRA: Right.

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2 MR. FOGEL: Special Use Permit was
3 applied for a hotel. I don't want to go
4 back through everything, but --

5 MR. BALESTRA: We've already been
6 there.

7 MR. FOGEL: No Special Use Permit
8 because the Applicant relied on the ZBA
9 determination that they didn't need one
10 to rent the property for less than 30
11 days.

12 MR. BALESTRA: Now focussing just on
13 6 Fennell, you said here in the Notice
14 of Appeal, "Moscarito justifiably relied
15 on the ZBA's 2011 determination that has
16 expended substantial sums of money."
17 I'm sorry, that's 46 East Genesee Street.

18 On 6 Fennell, let me keep it, I want
19 to focus on 6 Fennell. Is it your
20 contention that substantial sums were
21 expended on 6 Fennell in reliance on
22 that determination?

23 MR. FOGEL: There was work to be
24 done to 6 Fennell Street to get it up
25 and running as a short term rental. I

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2 think I acknowledged in the submission
3 and on the record that a vast majority
4 of the substantial improvements were
5 made before the ZBA determination,
6 that's the case. But the business, the
7 short term rental business around 6
8 Fennell Street was built up over the
9 four years since the determination was
10 made. So a lot of the substantial
11 improvements were done in 2010.

12 There was still reliance, there was
13 still money spent, there was a business
14 built around the determination for four
15 years. And over the course of four
16 years there was never any suggestion
17 that what Fingerlakes Luxury Homes and
18 Mr. Moscarito was doing with 6 Fennell
19 Street, that there was any issue. And
20 then all of a sudden, and I understand
21 that this became kind of a hot button
22 issue over the summer, but the fact
23 remains that for the previous four years
24 there was never any questions raised.

25 If the ZBA's determination was so

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2 clear, that this was not a permissible
3 use of the property, you would think
4 that something, the question would have
5 been raised at some point during the
6 subsequent four years. But it wasn't
7 until August 7th that the cease & desist
8 order was issued. So I think based on
9 all of that, based on -- and I don't
10 want to keep going back over it, but
11 based on the ZBA determination and the
12 business that was built up over the
13 subsequent four years, it seems
14 reasonable to determine that the ZBA
15 determination was that he could do this.

16 MR. BALESTRA: So back to my
17 question. On 6 Fennell Street, is it
18 after the determination that mostly the
19 marketing costs that you referred to is
20 expenditures that were --

21 MR. FOGEL: The marketing costs,
22 there was also a patio.

23 MR. EGGLESTON: There was additional
24 expense for a fence.

25 MR. BALESTRA: Now, was the patio

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and the fence, were those planned prior to the, prior to March 27, 2011 or were they just constructed after that?

MR. FOGEL: They were --

MR. BALESTRA: They constructed after that, I understand, were they planned to be constructed even before that?

MR. MOSCARITO: No.

MR. BALESTRA: So you went to the ZBA and they said, I'm using your words without making any judgment of my own, we're allowed to do this, we don't need a permit, so let's build a patio and a fence.

MR. EGGLESTON: The patio and the fence I believe was in the original application.

MR. BALESTRA: So there were plans to do that, so there was no money.

MR. EGGLESTON: And the basement was finished off more than what was originally planned as in a single family house. So all the work in the basement

1 Eggleston & Board

2 I believe was done as a direct result of
3 okay, it's now a short term rental,
4 we're going to do that. So while the
5 majority of the money was spent
6 regardless for a single family house,
7 and I believe you'll find the fence is
8 on the original application, the patio
9 was on the original application, work on
10 the basement was on the original
11 application.

12 MR. BALESTRA: Is it the Applicant's
13 contention that the Applicant may not
14 rent 6 Fennell Street for less than 30
15 days that the property has no value?

16 MR. MOSCARITO: May I?

17 THE CHAIRMAN: Sure.

18 MR. MOSCARITO: I'm Rick Moscarito,
19 the president of the Fingerlakes Luxury
20 Homes, and this is my wife, Debbie. The
21 property has significantly less value in
22 its present state if it's rented for
23 less than 30 days, the way we had built
24 it up over four years.

25 We went in front of both the

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Mr. Moscarito

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Planning Board and the ZBA with clear intentions on renting the property for

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less than 30 days. We asked

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specifically for a Special Use Permit.

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And I know we did, we categorized it as

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a hotel. And that's what we asked for.

8

But we did go in front of the Boards

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willingly and honestly and ethically and

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asked for of the permission to be

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granted. We didn't do this with

12

malicious intent, we didn't do this

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illegally. In our opinion we did ask.

14

And I do know that this is a very,

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you know, hot button topic, I do respect

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this, and so does my wife, the plight

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that the neighbors have with this type

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of rental, especially in the

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neighborhood district. We do feel that

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we are in the Downtown D District. We

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are in the Commerce District. We are

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next to transient hotels, it's a

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transient area. You have retail, you

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have hotels, you have the B&Bs. There

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is transient in and out of every single

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Mr. Moscarito

door and every single building in the
Downtown District. And I do know, and I
do care for the neighbors down there as
well.

We're very responsive to any needs
that the neighbors may have. We've only
received one complaint that I
specifically addressed recently, over at
6 Fennell, because of some noise that
was occurring a little bit late at night.
And one of the neighbors called and they
were very kind about it.

But you know, we're, all I can tell
you is that I had no malicious intent.
I would never do that. We care deeply
for the Village. We love the Village.
We used to save up our money to come and
shop and dine in the Village when we
were 17. We've been together since we
were 17. And we just, whether
passionate about it, we wanted to share
our experience and share our homes with
people that have families that come here
for weddings, that come here to gather.

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Mr. Moscarito

A lot of the people that live in Skaneateles stay with us. A lot of their extended family.

You know, we, like I said, we care deeply about the Village. We would never do anything to maliciously hurt anyone or anything in the Village. And all I can tell you is that we had good intentions at the time.

MR. BALESTRA: I can appreciate that and I read the complete minutes from March 2011. And I understand the nature of the application, and thank you for your comments. I do appreciate that very much.

My, I still want to go back to my question, because the issue of vested rights has been raised, and I want to know if it's your contention that the improvements are rendered essentially valueless if we don't allow you to rent for less than 30 days?

MR. FOGEL: Not valueless, but substantially less value if the ability

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Fogel - Board

to rent for periods of less than 30 days
isn't available to the Applicant.

MR. BALESTRA: Okay.

MR. EGGLESTON: I would just like to
comment for me, the zinger is the cease
& desist order said if you want to rent
for less than 30 days please apply for a
Special Permit, and that's what Rick did
at the outset.

THE CHAIRMAN: Any other questions
of the Board? I'm about to open the
public hearing for comment. I'm
guessing we've got about 10 or 15 people
who would like to speak. Would that be
the case that appears here? So my
request would be that you try and be as
concise as you possibly can, whatever
comments you have, pro or con. I think
we'll hear all comments at one time
versus separating pro and con. Is that
something we can do? I think that would
make it flow a little bit better as we
go. I don't want to call on people or
have people line up or however we go. I

1 Chairman

2 don't know how we can determine who
3 talks first, second, third, fourth, 22nd
4 or whatever it might happen to be.

5 I would ask you to be kind,
6 considerate and maintain decorum. We
7 all live here or most of us live here.
8 And we're all neighbors and so on. So
9 let's make sure we maintain some dignity
10 in our comments, please, regardless of
11 whether you're for or against the
12 particular appeal that we're discussing.
13 So I'll open.

14 MR. BALESTRA: Can I editorialize
15 for a second?

16 THE CHAIRMAN: Please.

17 MR. BALESTRA: Our job tonight, if
18 we get there, is to interpret the Zoning
19 Code and decide whether or not the cease
20 & desist letter was sent properly. And
21 we, in making our decisions, we have to
22 make sure that our decisions are
23 rational, and not arbitrary and
24 capricious. And our job is to interpret
25 the Code and the words that are in the

1 Balestra

2 Code.

3 We're not here to decide, frankly,
4 whether or not short term rentals in the
5 Downtown District are good for
6 Skaneateles or whether it's a tourist
7 town or whether the businesses benefit.
8 If we were to even consider those things
9 in deciding the issue that's before this
10 Board, our decision would be, in my
11 opinion, arbitrary.

12 So I'm inclined to let anybody speak
13 who wants to speak, and you can talk.
14 But I want to let you know that if
15 you're going to talk about how great
16 this is for, you know, the Irish store,
17 it's just not --

18 MR. BADAMI: Or how bad it is. We
19 don't need to hear that.

20 MR. BALESTRA: All we're really here
21 to decide is what the Code says and what
22 is allowed and what's not.

23 THE CHAIRMAN: And the proper forum
24 for that will be on December 1st at the
25 Board of Trustees, is not here. This is

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Balestra

we're here on a different matter, so.

MR. GALBATO: I also think the public should be aware that most likely, as alluded to by Mr. Fogel, that their comments would be included in all three public hearings, not just at this public hearing for this property.

THE CHAIRMAN: Correct, thank you. I'd like to try to start with maybe a two minute limit of some sort or another. For those of you not used to speaking, two minutes is a long time. But if you are not organized, two minutes seems to move by quickly. So hopefully those of you who are going to comment, you have some specific ideas of what you would like to talk about. We won't cut you off at two minutes point zero zero. But if you are in a thought to even consider that as you speak for whatever, everyone will be heard. All right, please understand that. Yes, ma'am?

MS. WEBER: For clarification purposes, what would you like to hear

1 Chairman

2 house. So we all understand the
3 scenarios, and we have emotional issues
4 too, but that's not our job here, we
5 can't do that, we can't allow that to
6 happen with ourselves or as he says, it
7 becomes an arbitrary decision based on
8 emotion in contrast to what we have to
9 consider.

10 So you are welcome to have anybody
11 come up, state your name and where you
12 live unless I just squashed all of you.
13 That was not my intent in any manner or
14 form. But I think it is important to
15 clarify what our actual function is in
16 this instance. Is that correct,
17 Counsel, what we said on that?

18 MR. GALBATO: Yes.

19 MR. BALESTRA: Just let your
20 judgment be your guide if you want to
21 say something.

22 THE CHAIRMAN: We'll proceed with
23 the open hearing so if there is anyone
24 who would like to speak.

25 MOLLY ELLIOTT: Hi, I'm Molly

1 Elliott

2 Elliott, I live at 125 Orchard Road. I
3 personally represent Debbie and Rick
4 Moscarito as their real estate agent,
5 worked with them for eight years. Mike,
6 I appreciate what you said, you're
7 absolutely right, this is not a forum to
8 say whether you agree with or disagree
9 with vacation rentals or short term
10 rentals.

11 But I want to say on behalf of the
12 Applicant, being their agent, selling
13 them 6 Fennell, right off the bat, they
14 seriously, with all my heart were not
15 being malicious, they had certain
16 intentions. I had that property on the
17 market for five months. It did not sell.
18 Rick and I had a short conversation,
19 came out what do you think about renting
20 it if you can't sell it? I won't get
21 into the history of their personal life
22 with his mother and things like that
23 that's not part of the conversation.

24 But by no means this was all by
25 accident. And I'm not saying the ZBA

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Elliott

2

did anything wrong, or the Village

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Planning Board, I'm just telling you

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that they went in front of the Board

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with Bob Eggleston. I was present at

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that meeting as well.

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Anyone can misrepresent anything the

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way someone says something. I'm reading

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what you're saying, I'm not on your ZBA,

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I was sitting there, I may have took it

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different. I'm telling you, they are

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stand up quality people. I've worked

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for developers in this Town, everyone

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knows the Seitz Building, I was part of

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that for seven years. They were bad

16

people. They were very bad people.

17

They are not bad people, they've done a

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very good job to our community.

19

These properties on Fennell Street,

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one of them on the market 755 days and I

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can prove it. Nobody bought it. If you

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look at it and say it's beautiful, and

23

I'm not for or against vacation rentals,

24

but that property has service, I'm from

25

here, born and raised here, fifth

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Elliott

2

generation. My friends from high school

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that come, and families, by no means are

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they here to take over the town and run

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away with everyone's money, they don't

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need it. It's just not the point.

7

What they said is honestly the truth

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they're good hearted people. And they

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do care about our community. And they

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do want to retire here. They have a son

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in 9th grade at Chittenango, and when he

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graduates they want to come here and be

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part of the community. Don't want to be

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outcasted.

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So I just want to say as their very

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dear friend and real estate agent, there

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was no malicious intent whatsoever.

18

They're totally 100 percent approachable.

19

If anyone has an issue they will fix it.

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They will come, that's why they went in

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front of the Board. They never did

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something to try to go behind the

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Village of Skaneateles' back.

24

Whether everyone read the minutes

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different, and maybe I did, I looked at

1 Elliott

2 emotion cannot be a part of it. As Mike
3 said, we are bound to interpret the Code.

4 MOLLY ELLIOTT: And the law.

5 MR. BADAMI: And the law. If this
6 were a forum of we approve nice people
7 and we don't approve the bad people.
8 Right, you know in a lot of ways this
9 would be a lot easier. Because I don't
10 know your clients, but I know you and I
11 know I take you at your word. So it's a
12 very difficult situation for us to be in.

13 And I'm sure it's very upsetting to
14 your clients to be in this situation.
15 But I do want to stress, I don't want
16 to beat a dead horse, but we have an
17 obligation to determine what's put in
18 front of us, and we have to do so in the
19 manner that we, you know, interpret,
20 honestly. And whether they're good
21 people or bad people or otherwise, I
22 appreciate what you said. I truly do.
23 And it's a very difficult situation for
24 everyone. But we are bound --

25 MOLLY ELLIOTT: You're doing a job.

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Lafever

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MR. BADAMI: We're doing what we

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have to do. Despite how I might

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personally feel or being sympathetic, it

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is what it is, is what I'm saying to

6

you. So thank you for speaking on

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behalf of your clients, and I hear

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everything that you said. So again,

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thank you.

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MR. BALESTRA: No one up here

11

believes there was any malicious intent.

12

THE CHAIRMAN: In any manner or form.

13

MR. BADAMI: Do not believe that for

14

a second.

15

THE CHAIRMAN: Anyone else? Please.

16

AMY LAFEVER: Amy Lafever, 29 Jordan

17

Street. You've all been talking about

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me. I can talk all night about the

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effects that this is having on my life,

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on my property. That's not what we're

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here for. I guess what I need to say is

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that I agree with the Board. I was at

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the meeting where the hotel occupancy

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was denied. I walked out of that

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meeting saying, good, we're done. And

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Muller

you know, it went on as it's intended.

And I guess hearing you say that you agree with me that that meeting nixed the whole hotel thing, is kind of, you know, good for me to hear. Because that's how I walked out of that meeting too. So thank you.

DIANE HAWLEY MULLER: Diane Hawley Muller, I live at 6 -- not 6, 8 Fennell Street. I could say how nice the Moscaritos are too, I met them in 2008. Bob Eggleston invited me to his office because they were going to have a single family dwelling next to my house. I was pleased to have new neighbors.

I was very surprised that they didn't move in. And I am glad to see that we're finally getting to what is a house supposed to be. Is it supposed to be a single family dwelling? Is it supposed to be a hotel? Because when I went to the Village meeting it was a single family dwelling. And I never heard anything afterwards.

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Weber

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It's my fault for being ignorant and not searching out more information about the house as to why it became transient in less than 30 days. But I would like the Board to do what you have to do so that it's done right. That's what I need. I want it done right. Thank you.

THE CHAIRMAN: Thanks, Diane.
Anyone else? Please?

MAUREEN WEBER: Hi, my name is Maureen Weber, I live at 24 East Genesee Street. While we have -- I have met Rick and his wife, he's part of our neighborhood. Seems like very nice people, I met them a couple times.

MRS. MOSCARITO: Thank you.

MAUREEN WEBER: My biggest concern is as we go forward with this law, and we look at other people who are going to be addressing their specific issues on coming on board as a bed and breakfast or as a lodging and other people in this Village, how do we enforce this?

Because the whole point is, here is

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Weber

Mr. Moscarito for four years being able to work with this like this. And that's a disservice to him, but also a disservice to the entire neighborhood. So how do we go forward enforcing this on a consistent basis so this doesn't happen anymore? That's my biggest concern.

THE CHAIRMAN: It's a Trustee question, and I think that by the first of January that issue will be dealt with specifically. Would that be an accurate statement to be made I think at that point? We are making a decision of one sort or another, will certainly be made by December 1st. At which time the fact that, again we can't speak, we're not an enforcement agency here at this end, in our Board, but at the same time, it has been certainly recognized that enforcement has been lax for as long as I've lived in this Village. But that doesn't make it right.

So what's happening now is, now with this recognition, there has certainly

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Weber

been an education for those of us on the various Boards that we need to certainly continue to pay attention as we go on. And that perhaps as we go on here we truly do need to start to either make very, very specific codicils which we intend to and will continue to do in our recommendations as much as possible. And at the same time to allow room for sensible enforcement of whatever laws will then be in place.

MAUREEN WEBER: Tonight would be the first time I heard from the Zoning Officer regarding any penalties or anything of that nature. In the draft of a new law there is no, any mention of penalties at all.

THE CHAIRMAN: I can't speak for that. I honestly don't recall what the current draft is.

MAUREEN WEBER: And yet from the answers tonight, I'm not sure if it's the answers or not, they're listing a penalty of almost \$500 a day. So it's

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Moran

not just happening here, I think we're all aware.

THE CHAIRMAN: Yes, absolutely correct. More please? Anymore information, anyone else want to speak here? Ms. Moran?

SUE MORAN: Sue Moran, I am still listening to all this and I have gone before the ZBA over the years that we've lived here. I lived in three different houses in the Village and gone for variances on things and gone along with, really strict. Particularly when we had George Battle. George Battle made sure he dotted every i and crossed every t.

And in listening to this tonight and I'm thinking, wait a minute, if I came to you and said I want to turn my garage into a pub. And you said, no, you can't turn your garage into a pub, but that's what I want to do. And you said, no. It's still a garage. I leave there thinking it's a garage. Just because I asked for it to be a pub, I don't get to

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Moran

make it a pub.

But I'm hearing this as that's kind of what happened here. And yet for all these years the ZBA and the Planning Board have been so strict. I mean you put an extra step at your front door and you need a variance for it. My neighbor just put a generator in, it took her how many months to get it all approved and all the permits and all that sort of thing to put a generator in?

So it's like something slipped in the cracks here. I mean we live in a Village that is in a Town that we took some man's house down on East Lake Road because he wasn't up to Code. So it's like okay, we really need to step up to the plate here.

THE CHAIRMAN: That would be good. I would certainly encourage you on December 1st to also make those comments, because it truly is a Trustee issue item. But that would be good, Sue, to do that as well. Thank you.

1 Mrs. Moscarito

2 Anyone else?

3 DEBBIE MOSCARITO: I'm Debbie
4 Moscarito and I just wanted to point
5 out back to the 2011 hearings that we
6 had, that we were not lawyers, we relied
7 on Bob, he's very good at what he does.
8 He did the best he could for us, but we
9 looked to you guys for an answer.

10 And we also looked to Mr. Galbato at
11 both those hearings, he's an attorney.
12 And we relied on your information. And
13 we were misled, from what you're saying
14 here tonight we were misled in believing
15 that you guys didn't have a problem with
16 it. And now we've gone four years and
17 in building this company, business, and
18 we want to retire here ourselves. But
19 we've gone four years thinking it was
20 okay. And now it's all going to be
21 taken away.

22 We relied on the municipality to
23 guide us and direct us and let us know.
24 And it's apparent that it wasn't equal
25 across the Board because now we're going

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Mrs. Moscarito

to end up paying.

THE CHAIRMAN: I would disagree with your word choices, Ms. Moscarito. I would say that there have been different interpretations of what has taken place, but the word misled I think is a little harsh.

DEBBIE MOSCARITO: That's fine, but we relied on the attorney to get us the information we needed. And no one came back to us and said we couldn't do it. And we were like Ms. Weber said, we were all misdirected or whatever, because there is no consistency. And now we're four years down the road, now we're addressing the situation. We should have been told no, back then, you cannot do that.

And all throughout those minutes I studied them and studied them and there are several times in those minutes where Mr. Galbato said, we don't have a problem, we cannot tell you what to do in your single family dwelling, whether

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S. White

it's you rent it a week, a month or whatever, we can't tell you what to do with it.

Chairman Keenan said too. Member Millman said it as well in one of those minutes. We just, we're going based on what you guys were telling us, and we felt that we didn't have a problem with it. I wish there was a yes or no at the end, I guess.

THE CHAIRMAN: Fair enough. There certainly will be, and has been in the future at this particular point, quite seriously. Anyone else who would like to speak?

STEPHEN WHITE: Stephen White, I live at 20 State Street in Skaneateles. I'd like to ask the Board a question and then I make a statement about something else, then hear your answer to the question. Don't you need a occupancy permit for a hotel or short term rental or whatever you call it? And if so, how do they get it when it wasn't permitted

1 S. White

2 in that District?

3 THE CHAIRMAN: I would have to refer
4 to the Code Enforcement Officer on that
5 one, I have no idea. That's not
6 something we would handle.

7 STEPHEN WHITE: I'll ask John in
8 private, he's a friend. The other thing
9 is, how do you go a stretch from hearing
10 the information and interpreting it as
11 you do, from one property then to say,
12 well, I can do what I want in two
13 others?

14 THE CHAIRMAN: That is certainly a
15 question we have considered, yes.

16 STEPHEN WHITE: I don't think that's
17 legitimate in any way, shape or manner.
18 And I don't think that you might get the
19 same situation with two more hearings.
20 But it sounds to me like you never
21 applied for any permits.

22 DEBBIE MOSCARITO: We tried. We
23 tried.

24 THE CHAIRMAN: At 46?

25 MR. MOSCARITO: Not at 46.

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S. White

THE CHAIRMAN: Not at 46.

DEBBIE MOSCARITO: We tried initially, and we were told --

STEPHEN WHITE: Unless they are reading something that isn't there. I heard you can use it for anything that's allowed for a single family dwelling. I assume it's printed in the minutes. I assume it was stated at the time or it wouldn't be printed in them. And that's as clear as a bell to me. And I'm not for or against short term rentals in particular districts and so forth. But in this particular case it sounds to me like somebody ran with something that they didn't know. They tried to create rights that weren't there.

THE CHAIRMAN: Thank you.

DIANE HAWLEY MULLER: It isn't that I'm for or against this either. It's that I have to get a permit for anything that I do at Fennell or on my property. And we have to go through the steps to do this. In order to put a fence in, in

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Betty White

order to make improvements on our house,
no matter what we have to do we have to
go and ask. Put an addition on my house
I had to go to the Village. The permits
have to be in place. And it doesn't
seem to me that that's the case
listening to what you're saying up there
tonight. Thank you.

THE CHAIRMAN: Thank you. Anyone
else like to speak, some manner of forum
here?

BEVERLY WHITE: Beverly White, 20
State Street. Excuse my shaking, and I
also have my husband, and I have a
business at 18 East Genesee Street. My
former husband and I bought that
building, at least 30 years ago, when it
was very quiet. But anyway, I have a
question.

When I was on the Historical
Preservation Commission and 46 Genesee
Street was purchased. I remember that
we specifically, that we were told that
the Moscaritos were going to live there.

1 Betty White

2 And that even there was going to be room
3 for a mother or a mother-in-law,
4 something. And also on Fennell Street
5 they were going to live there. But now
6 they're not going to live there. So I
7 just wonder how you can get permission
8 to do certain things and then change it
9 after you get that permission?

10 THE CHAIRMAN: Which is pretty much
11 why we're here this evening. This is
12 the end result of why we are here.

13 BEVERLY WHITE: They were going to
14 live at 46 East Genesee Street.

15 THE CHAIRMAN: That is in the
16 minutes, thanks very much. Anyone else
17 who would like to speak here at this
18 point? Okay then I would accept a
19 motion --

20 MR. EGGLESTON: I would just like to
21 make one comment. Bob Eggleston,
22 architect for the Applicant. I just
23 want to point out that during the
24 Planning Board and Zoning Board --

25 SUE MORAN: Can't hear back here.

Eggleston

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MR. EGGLESTON: They have to hear.

During the Planning Board and Zoning Board Appeals meetings in 2001 (sic), never did either Boards go through the definition of a single -- go through the definition of a dwelling unit. They never recited what is the definition of a dwelling unit or a single family dwelling.

Also if you look at the minutes, of 46 Genesee Street, there is a lot of deliberation from the Planning Board about parking and required number of parking and stuff like that. At one point, if I recall, I think I almost found the reference, I haven't found it yet, a Member Eberhart said, no, it's not about how many square feet in a dwelling unit, which is supposed to determine the number of cars, we were required to have 3 by zoning, 3.5 specifically, it's all about heads in beds.

So I would like to say that by the

1 Eggleston

2 time we got to 46 Genesee Street, I
3 don't think there was any lack of
4 understanding what the intent was for
5 the property. And again the use of
6 6 Fennell Street and the other
7 properties was never questioned for four
8 years during this time frame.

9 THE CHAIRMAN: And I would also
10 quote from that same presentation on
11 January 2nd, 2013. By Mr. Eggleston:
12 "Since then he has decided to cut back,
13 so it is only one dwelling unit that
14 will occupy the second, third and fourth
15 floors and the retail will occupy the
16 entire first floor." So right off the
17 intent was one dwelling unit for three
18 floors. Which was our, certainly was
19 then stated that the intent at that time
20 was to live. So this discussion at the
21 ZBA was based off of that. And then we,
22 whatever discussions it went down
23 through.

24 MR. EGGLESTON: That's what got the
25 one dwelling unit on the second, third

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Eggleston

and fourth floor, that's what got it.

THE CHAIRMAN: Okay, perfect.

Anything else? Anyone else that would like to speak?

MR. GALBATO: Mr. Chairman, I think there's been some public comments after Mr. Fogel made his presentation. He should be allowed to comment to any of the public comments that were made after he was done with his presentation if he wants to, before you consider closing it.

ELOISE LUCHSINGER: Eloise Luchsinger, I live right next door to 46 East Genesee. My building is Number 44. I have a business, Skaneateles Furs, 32 years here. So I'm very familiar with what's been going on. I don't have a problem with Rick's tenants, but there are two dwelling units in that building. Not one. I don't know where that information came from.

THE CHAIRMAN: Thank you, I was reading minutes from a Board meeting from two years ago. Is there someone

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Fogel

else? You want to speak also, ma'am?
Counsel, would you like to, anything to
rebut?

MR. FOGEL: Yes, thank you.

Definitely appreciate the comments
before the hearing why we're here
tonight and to decide the question
whether the cease & desist order was
properly issued. And the question of
whether it's good or bad isn't relevant
to the question at hand.

So, you know, with respect to any
complaints that may have been made,
unless there is a police report to kind
of go along with it, we'll just have to
assume being an unsubstantiated
complaint. But putting that aside,
because again it really doesn't factor
into the ZBA determination tonight.

The only thing I would also address
is there was a question about, and it's
kind of been suggested, that there was
some attempt to mislead. And we
definitely appreciate the Zoning Board,

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Fogel

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no one on the Zoning Board said, Zoning Board statement that they know that that wasn't the case.

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When the intention changed whether Moscaritos were going to reside at 6 Fennell or not, the new application was submitted to the ZBA, the one that lead to the March 2011 minutes. I won't rehash the arguments.

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That's a point of clarification when the plans did change, the Moscaritos were very up front with the Village about their intent. The intent was to rent the property. So just want that noted. But otherwise I don't have anything more to add.

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THE CHAIRMAN: Thank you, very much.

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MR. GALBATO: Mr. Chairman, before you close the public hearing, you alluded to minutes of a public meeting regarding one of the other properties.

23

THE CHAIRMAN: Oops.

24

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MR. GALBATO: That's fine, but we should accept those as part of the

1 Fogel

2 record and acknowledge that to the
3 Applicant as well. So if it pleases the
4 Board and the Applicant, I think aside
5 from what the Applicant submitted this
6 evening as well as his prior submissions
7 to the Board, but also all of the public
8 minutes for the ZBA, Planning Board and
9 Board of Trustees, for all three
10 properties, I would suggest be part of
11 the record for the Board.

12 MR. BADAMI: Were those not
13 specifically referenced by Counsel as
14 incorporating them by reference within
15 this hearing? That was my understanding.

16 MR. FOGEL: I don't know if I
17 specifically -- I definitely attached a
18 series of minutes.

19 THE CHAIRMAN: And I thought this
20 was one of them.

21 MR. FOGEL: I don't know if it's
22 every single minutes, but anything
23 that's been referenced, yes.

24 MR. GALBATO: So all of the minutes
25 on 6 Fennell, any and all minutes in

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Chairman

front of the Village regarding 15 Fennell, if any, and then all of the minutes regarding 46 East Genesee Street should be part of the record. And this Board is well familiar with them. You received them by e-mail.

MR. BADAMI: So agreed, Counsel?

MR. FOGEL: That's fine. We're all better off with it, a complete record.

THE CHAIRMAN: So do I need to move to make that part of the record, just state it?

MR. BADAMI: We have on the record by agreement.

MR. GALBATO: That's fine.

THE CHAIRMAN: And actually in that case I would like to move we close the public hearing. I need a second.

MR. PARDEE: Second.

(All Members responded yes).

THE CHAIRMAN: And your certainly welcome to stay, but before we do anything I want to thank you for maintaining decorum and dignity. That

1 Balestra

2 this could have been very contentious,
3 but I think it was very well handled. I
4 want to thank the audience and
5 participants for your professionalism
6 and how you handled yourselves. Have a
7 wonderful time on December 1st. Thank
8 you.

9 MR. BALESTRA: What we're here to
10 consider is whether or not the cease &
11 desist letter was appropriately sent.
12 And I would like to limit, from this
13 point on, like to limit this to 6
14 Fennell at this point and appropriate to
15 address the other properties separately.

16 Everything that we said will apply,
17 to this point, we agree it applies to
18 the other two properties, the appeals to
19 the other two properties, so we won't
20 have to do all that again.

21 More particularly we ask, we have to
22 decide whether or not, whether to grant
23 or deny the appeal of the cease & desist
24 letter sent by the Code Enforcement
25 Officer. So to rehash the history very

1 Balestra (6 Fennell)
2 briefly, frankly I think it was summed
3 up and then some by Mr. Fogel.

4 On August 7, 2015, the Code
5 Enforcement Officer sent a letter to
6 Rick Moscarito, the subject being
7 6 Fennell Street, advising that the Code
8 Enforcement Office was in receipt of
9 specific complaints regarding short term
10 rentals at the property for periods of
11 less than 30 days. And the Code
12 Enforcement Office requested that he
13 immediately cease & desist from the
14 practice of short term/vacation rentals
15 or that use at 6 Fennell Street.

16 In response this appeal was filed to
17 the ZBA. And the date of the appeal I
18 believe was, the date of the application
19 was September 30th, Rick?

20 MR. GALBATO: Yes.

21 MR. BALESTRA: September 30, 2015
22 for 6 Fennell Street. The Notice of
23 Appeal was filed through Fingerlakes
24 Luxury Homes, Inc.'s attorney, alleging
25 vested rights in the property and the

1 Balestra (6 Fennell)
2 ability to use the property as a short
3 term vacation rental, alleging that that
4 was previously permitted by the Zoning
5 Board of Appeals in March of 2011.

6 Couple other kind of basic points.
7 The property is located in Downtown D.
8 The Code Enforcement Officer advised us
9 previously that no Special Use Permits
10 have been granted for this property for
11 any use.

12 And I think that what we need to
13 consider now is, whether or not based on
14 our interpretation of the Code tonight,
15 6 Fennell Street is permitted to be
16 rented for periods of less than 30 days
17 under the Code. And I'll get that
18 conversation rolling by noting that in
19 my interpretation of the Code there are
20 five uses which allow for transient
21 occupancy of less than 30 days, being:
22 Bed and breakfast home stays, lodging,
23 hotel, motel, and rooming house. And
24 all those, I'm not going to read the
25 definitions of those uses. Some of the

1 Balestra (6 Fennell)

2 distinctions are subtle, but those are
3 the only ones.

4 And it's my interpretation that if
5 you are, and by the way all of those are
6 conditional uses in the Downtown
7 District. So you need a special Use
8 Permit in order to use your property as
9 one of those five uses. And if you are
10 using your property as one of those and
11 you don't have a Special Use Permit, it
12 would be illegal.

13 I would further note that as far as
14 I know, and I believe the record
15 reflects, 6 Fennell Street is a single
16 family dwelling. There are other
17 permitted uses but -- there are other
18 permitted uses in the Downtown District
19 that don't require a Special Use Permit.
20 None of them would provide for transient
21 lodging. To that extent it's a single
22 family dwelling.

23 And the definition of single family
24 dwelling is -- sorry, the definition of
25 dwelling, which is encompassed, with the

1 Balestra (6 Fennell)
2 one family dwelling definition is: "Any
3 building or structure or part thereof,
4 used and occupied for human habitation
5 or intended to be so used. The terms
6 dwelling, dwelling unit, one-family,
7 two-family dwelling, multifamily
8 dwelling and townhouse dwelling, shall
9 not be deemed to include motel, hotel,
10 rooming house or other accommodations
11 used for more or less transient
12 occupancy for less than 30 days."

13 I'm not persuaded that this Board is
14 precluded from interpreting the Code
15 tonight as we deem fit. It's my opinion
16 and interpretation that you may not rent
17 a single family dwelling or any form of
18 dwelling for less than 30 days without a
19 Special Use Permit.

20 I think it's been established and
21 admitted that there is no Special Use
22 Permit for 6 Fennell Street. Therefore
23 it's my opinion that the cease & desist
24 letter was sent appropriately. And it's
25 my opinion that the appeal should be

1 Balestra (6 Fennell)

2 denied, and the cease & desist letter
3 should be affirmed. But I open it up to
4 you all if you have any comments on that
5 or want to add any point that you think
6 we should consider as well.

7 MR. COVILLE: Before I comment on
8 this or clarify, I want to comment that
9 this is not an attack on anyone by any
10 means, it's interpretation of the facts
11 as presented. And seeing as how not
12 being arbitrary or capricious, I cannot
13 find any sort of evidence here to not
14 agree with Mike that it wasn't issued
15 correctly.

16 MR. PARDEE: Go ahead.

17 THE CHAIRMAN: I also agree with Mike.

18 MR. BADAMI: I concur with
19 Mr. Balestra as well.

20 THE CHAIRMAN: So I guess what I
21 would like to have you do, Mike, make a
22 motion, if you could.

23 MR. BALESTRA: Well then, I move
24 that we deny the appeal by Fingerlakes
25 Luxury Homes, Inc. and determine that

1 Balestra Motion 6 Fennel
2 the Code Enforcement Officer's cease &
3 desist letter was correctly issued for
4 6 Fennell Street, on the grounds that
5 the Special Use Permit has not been
6 issued for that property permitting it
7 to be used as any of the transient uses
8 under the Code, being bed and breakfast
9 home stay, lodging, hotel, motel rooming
10 house.

11 The Zoning Law does not allow
12 transient occupancy property located in
13 the Downtown D District, need a Special
14 Use Permit first obtained from the ZBA.

15 The ZBA further notes that the cease
16 & desist letter states, this is a
17 technicality, that the use of the
18 property as alleged was prohibited.
19 That should say, the use is, it's a
20 conditional use, not a prohibited use
21 under the Code.

22 So to the extent that we need to
23 modify that determination of the Code
24 Enforcement Officer, I think it's
25 immaterial to the determination, but I

1 Vote on 6 Fennell

2 to proceed on that one then?

3 MR. GALBATO: Opening the application.

4 THE CHAIRMAN: I would like to now
5 open the public hearing on the matter of
6 application of Fingerlakes Luxury
7 Homes/Rick Moscarito to appeal the cease
8 & desist letter issued by the Village
9 Code Enforcement Officer for rental of a
10 dwelling unit for less than a 30 day
11 period at the property addressed as
12 15 Fennell Street in the village of
13 Skaneateles.

14 MR. GALBATO: And this appeal was
15 also a Type 2 action under SEQR.

16 THE CHAIRMAN: Also a Type 2 action
17 under SEQR. Do we need to read through
18 again or how would you like to proceed
19 from here?

20 MR. GALBATO: First, I think with
21 the consent of the Applicant, would be
22 to open the public hearing and
23 acknowledge that everything that was in
24 the prior public hearing on this matter.

25 THE CHAIRMAN: Is apropos.

1 Opening 15 Fennell

2 MR. GALBATO: Is included in this
3 public hearing, including the
4 documentation submitted by the Applicant,
5 as well as the prior minutes
6 acknowledged by this Board.

7 MR. BALESTRA: If anyone has
8 anything to add.

9 MR. GALBATO: Sure, give them an
10 opportunity.

11 THE CHAIRMAN: Including Counsel.

12 MR. GALBATO: Including the Applicant.

13 THE CHAIRMAN: Anything to add at
14 this point regarding 15 Fennell Street?
15 I would like to move we open the public
16 hearing to consider the matter. The
17 information has been already transmitted
18 to us and the previous time framework
19 here during this meeting. Does Counsel
20 have anything to add do that?

21 MR. FOGEL: Our arguments were
22 already set forth previously on the
23 record. And with respect to 15 Fennell
24 Street as contained in our submissions
25 presented tonight, as well as our

1 Opening 15 Fennell
2 statements in support of the appeals, as
3 set forth during the hearing on the
4 6 Fennell Street property. We would
5 just ask all of that be incorporated
6 into the record of the hearing for
7 15 Fennell Street.

8 THE CHAIRMAN: Does anyone like to
9 speak in favor or in opposition to this
10 that will have different information or
11 different concerns than previously
12 stated?

13 STEPHEN WHITE: I would like to ask
14 if there was a separate hearing for
15 15 Fennell Street?

16 THE CHAIRMAN: Originally?

17 STEPHEN WHITE: Yes.

18 THE CHAIRMAN: I saw a record of a
19 Planning Board meeting, I do not have a
20 ZBA copy in front of me at this point.
21 But I know for sure they went before the
22 Planning Board on September 8, 2011. So
23 that it was presented to the Village at
24 that particular time.

25 STEPHEN WHITE: Thank you.

1 Opening 15 Fennell

2 THE CHAIRMAN: Anyone else? All
3 right then, I would move we close the
4 public hearing. And we'll vote. Close
5 the public hearing.

6 (All voted yes to close).

7 THE CHAIRMAN: Then would make a
8 motion.

9 MR. BALESTRA: First, actually I
10 should back up. I want to ask the
11 Applicant or just clarify for the
12 record. Now talking about 15 Fennell
13 Street, the contention is that you
14 relied on the ZBA March 22, 2011
15 hearing, and also making, purchasing and
16 making improvements to that property.
17 Is that right?

18 MR. FOGEL: That's correct, as set
19 forth in our brief. I think I went
20 through that in detail during our
21 arguments previously during the last
22 hearing, it was on the record, that the
23 Applicant believes that there was no
24 reason to have to go back to the ZBA for
25 determination because they felt that it

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Balestra 15 Fennell

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had already been made on similarly

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situated property. So nothing more to

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add other than that.

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MR. BALESTRA: I'm going to go

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through, before I make a motion again,

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because the facts are a little bit

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different. On August 7, 2015 the Code

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Enforcement Officer sent a letter to

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Rick Moscarito for 15 Fennell Street

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advising that the Code Enforcement

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Office was in receipt of complaints

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regarding short term vacation rentals

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for property of less than 30 days. The

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Code Enforcement Office requested a

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cease & desist from the practice.

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On September 28, 2015, an application

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to appeal the Code Enforcement Officer's

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cease & desist letter was received

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through the Applicant's attorney,

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alleging vested rights in using the

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property at 15 Fennell Street for short

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term vacation rentals or otherwise

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transient occupancy. This property also

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is located in the Downtown D District.

1 Balestra 15 Fennell

2 And again, for the record, in my
3 view there are five uses in our zoning
4 Code that allow for transient occupancy
5 of less than 30 days: Bed and breakfast
6 home stays, lodging, hotel, motel and
7 rooming house.

8 It was established that we have
9 learned that no Special Use Permit has
10 been granted for this property in all of
11 those uses. The only ones that allow
12 for transient occupancy would require a
13 Special Use Permit.

14 With that in mind, it appears that
15 this property is now a single family
16 dwelling, it has not been approved as
17 anything else. As such, the definition
18 of dwelling in the zoning Code applies.

19 The definition of dwelling provides,
20 definition of dwelling is: "Any building
21 or structure, or part thereof, used and
22 occupied for human habitation or
23 intended to be so used. The term
24 dwelling, dwelling unit, one-family
25 dwelling, two-family dwelling,

1 Balestra 15 Fennell

2 multifamily dwelling and townhouse
3 dwelling shall not be deemed to include
4 motel, hotel, rooming house or other
5 accommodations used for more or less
6 transient occupancy of less than 30 days."

7 To the extent that the cease &
8 desist letter alleged complaints that
9 the transient occupancy at 15 Fennell
10 Street was being used for transient
11 occupancy, and 15 Fennell Street had not
12 been permitted to be used for transient
13 occupancy as of any of the five uses
14 that I set forth described before, it's
15 my opinion the cease & desist letter was
16 appropriately sent. And the Code
17 Enforcement Officer's interpretation of
18 the Code was accurate and should be
19 affirmed, with one caveat.

20 Which would require an immaterial
21 modification, which is that the use
22 described in cease & desist letter as
23 being prohibited is in fact conditional,
24 which requires a Special Use Permit
25 under the Code.

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Balestra 15 Fennell

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So with all of that said, it would be my recommendation that we deny the appeal and affirm the cease & desist letter, subject to any comments.

THE CHAIRMAN: Gentlemen? No. Accept a motion.

MR. BALESTRA: There being no additional comments, does anyone disagree with anything that I've just said? The Board not disagreeing with anything I've said, I make a motion that we deny the appeal submitted by Fingerlakes Luxury Homes, Inc. for 15 Fennell Street and affirm the Code Enforcement Officer's cease & desist letter, dated August 7, 2015, as being correctly issued, in that a Special Use Permit has not been issued for the property permitting it to be used as a bed and breakfast, lodging, hotel, motel, rooming house. The Zoning Law does not allow transient occupancy for properties located in the Downtown D District unless a Special Use Permit is

1 Opening 46 East Genesee

2 open the public hearing in the matter of
3 the application of Fingerlakes Luxury
4 Homes, Inc./Rick Moscarito, to appeal a
5 cease & desist letter issued by the
6 Village Code Enforcement Officer by
7 rental of a dwelling unit for less than
8 a 30 day period at the property
9 addressed as 46 East Genesee Street in
10 the Village of Skaneateles.

11 So are there any additional comments
12 would like to be made? I'd like to open
13 the public hearing.

14 ELOISE LUCHSINGER: You're talking
15 about issuing a cease & desist letter.
16 These people have not ceased and
17 desisted. There is people in and out of
18 there all the time. Is this man being
19 fined or is that your jurisdiction?

20 THE CHAIRMAN: One is not our
21 jurisdiction. What they have done is
22 that once a cease & desist order has
23 been presented to an occupant or to an
24 owner, they have the right to appeal the
25 decision made by the Code Enforcement

1 Opening 46 East Genesee
2 Officer to cease & desist. So the
3 hearing tonight is the Applicant
4 appealing the decision that was made by
5 the Code Enforcement Officer for cease &
6 desist.

7 So what we're voting on is to
8 whether we felt that the cease & desist
9 orders were valid in the manner in which
10 they were presented. And then if so, in
11 the future once we are, once enforcement
12 begins again, the people will be
13 involved in doing that will have to take
14 that into consideration.

15 ELOISE LUCHSINGER: So the cease &
16 desist letters --

17 THE CHAIRMAN: Not necessarily at
18 this particular point in time. Things
19 are changing very very quickly. I can't
20 speak for the Trustees, but I know the
21 trustees are going to be making
22 determinations. But even more so the
23 moratorium on enforcement is up on I
24 believe December 30th or 31st. So the
25 moratorium is a finite time frame word.

1 Opening 46 East Genesee

2 So no enforcement can possibly take
3 place during that as part of the
4 agreement with the moratorium.

5 ELOISE LUCHSINGER: Even though
6 they're still advertising?

7 THE CHAIRMAN: That's correct.
8 That's part of the moratorium allowed
9 the time frame to go. Yes, ma'am?

10 MAUREEN WEBER: So to clarify,
11 during the moratorium, people could
12 continue to do short term rental?

13 THE CHAIRMAN: Correct.

14 MR. GALBATO: The moratorium is
15 specific to districts in the Village,
16 which are Downtown D and C Districts.

17 ELOISE LUCHSINGER: And they have
18 been.

19 THE CHAIRMAN: The reason for, I
20 can't speak for the reason for the
21 moratorium, but the idea behind the
22 moratorium was to have everybody be able
23 to take a look at what was taking place
24 and that no rash judgments were made
25 without consideration of the many facts

1 Opening 46 East Genesee

2 not roaming around trying to look for
3 ways to be an Enforcement Officer. He
4 actually waits for someone to come to
5 him with a formal complaint, in which
6 time he's going to be asked to act. I
7 believe that's correct. Is that
8 correct, John?

9 MR. CROMP: That's correct.

10 THE CHAIRMAN: That's how that goes.
11 So he is not proactive to go out and
12 look.

13 MAUREEN WEBER: To go look.

14 THE CHAIRMAN: Once he is asked to
15 act is when he goes into.

16 MAUREEN WEBER: In the residential
17 area, from my understanding, there has
18 been deemed no more short term rentals.
19 Is that correct?

20 THE CHAIRMAN: We don't know what's
21 been deemed at this point in time,
22 that's nothing --

23 MAUREEN WEBER: Nothing been
24 determined.

25 THE CHAIRMAN: Nothing determined,

1 Opening 46 East Genesee
2 the meeting of the Trustees on December
3 1st, then whatever following meeting
4 they may or may not have.

5 MAUREEN WEBER: And that will be
6 December 1st?

7 MR. BALESTRA: With regard to the
8 Residential District did you ask?

9 MAUREEN WEBER: Yes.

10 MR. BALESTRA: Nothing the Trustees
11 will do on December 1st has to do with
12 the Residential. You have to ask the
13 Trustees, but my understanding the
14 Residential Districts, it's been
15 determined that transient occupancy is
16 not permitted.

17 MAUREEN WEBER: That's what I've
18 been reading.

19 MR. BALESTRA: My understanding is
20 that enforcement measures take place.
21 We are only talking about, the
22 properties at issue tonight are in
23 Downtown D, and the Trustees are only
24 considering changes to the Code that
25 would apply to Downtown D.

1 Opening 46 East Genesee

2 MAUREEN WEBER: And so basically,
3 even in the residential area, nothing
4 takes total affect until the 31st, am I
5 correct on that?

6 THE CHAIRMAN: Yes.

7 MR. GALBATO: No, that's not
8 correct. The moratorium passed by the
9 Trustees in September of 2015 had to
10 deal with the C and Downtown D Districts.
11 And part of the moratorium stated that
12 during the moratorium period no
13 enforcement activity shall be undertaken
14 or pursued by the Village of Skaneateles
15 in connection with alleged violations of
16 prohibition upon so called short term
17 rentals, those of less than 30 day
18 duration, in the Commercial C and
19 Downtown D Districts.

20 So in Residential Districts there is
21 no stay of any type of enforcement by
22 the Village. But that's not to say that
23 this Board has the purview of this
24 action for the Applicant.

25 MAUREEN WEBER: Sorry to belabor it.

1 Opening 46 East Genesee

2 need to be filed if you feel there is an
3 egregious event.

4 MAUREEN WEBER: Got it, thank you.

5 THE CHAIRMAN: Sue, do you have one
6 more thing?

7 SUE MORAN: If you go online to
8 Airbnb and other things, these people
9 are all still advertising. And they've
10 got a calendar, and if you go into their
11 calendar they're well into the summer of
12 2016. Is there any way that the Village
13 will be held responsible for money lost
14 because they hadn't rented?

15 THE CHAIRMAN: No idea. That's not
16 our purview at all.

17 SUE MORAN: But I mean the fact
18 they're going ahead and doing all that,
19 and then come back and say, we lost all
20 this money.

21 THE CHAIRMAN: Again, that would be
22 up to the property owner to file a
23 complaint of some sort or another if
24 they felt they were being unfairly
25 treated or egregious. Definitely not

Opening 46 East Genesee

our purview at all.

SUE MORAN: I'm looking at it as being a resident, a taxpayer in the Village, wondering if this moratorium put us all at-risk that way, because they have gone ahead and continued to advertise, continue to take down-payments. And all of a sudden as of December 31st, no, you can't do it anymore and they go, well, wait a minute, look, I've got this booked all the way through 2016.

MR. BALESTRA: Proceed at your own risk.

SUE MORAN: So we're note liable?

MR. BALESTRA: I'm not issuing you an opinion.

THE CHAIRMAN: All right, I'd like to proceed on this, please.

MR. BALESTRA: Mr. Fogel, again, on this we're only talking about 46 East Genesee Street. I just want to be clear it's the Applicant's position again, in purchasing and making improvements to 46 East Genesee Street, the Applicant

1 Opening 46 East Genesee

2 relied on the March 22, 2011 hearing.

3 Is that correct?

4 MR. FOGEL: Yes, our arguments were
5 set out in the brief. But I also want
6 to address one issue, and I know I
7 raised it earlier. The question of
8 whether, I know we've been here for
9 three hours, but the question whether
10 this should have gone forward in light
11 of the moratorium.

12 In determining whether the cease &
13 desist order is enforceable or was
14 properly issued, sounds a lot to me like
15 it's a step in pursuing enforcement,
16 which is supposed to be stayed by the
17 moratorium.

18 Our appeal of the cease & desist
19 order is a step in the enforcement
20 process, it provides the Appellant with
21 the rights to challenge the cease &
22 desist order. By now upholding the
23 cease & desist order, that seems a lot
24 like it's pursuing enforcement. Which
25 should have been, in my opinion, stayed

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and the architect's presentation it is our determination this is a single family residence, which is permitted on Downtown D."

Now correct me if I'm wrong, but their decision to purchase 46 East Genesee Street and to rent it was based on that decision. This isn't a single family residence, is it or single family dwelling. Can you clarify that for me?

MR. EGGLESTON: If you read the definition, single family dwelling has a dwelling unit. A single family dwelling doesn't make any statements as to the time period of rental under the definition of single family dwelling. Just like two-family dwelling doesn't make any statement of the limitations of the rental. Just like multiple family doesn't make a statement of period of renting, so on and so forth for all the categories of dwelling unit. It's only under dwelling unit that it makes a statement, okay.

1 Opening 46 East Genesee

2 MR. GALBATO: Curt, if it pleases
3 the Board, the Board can take notice of
4 the definitions of dwelling, one-family
5 dwelling, dwelling units as well as a
6 definition of family that are clearly in
7 the Code.

8 THE CHAIRMAN: Anymore comments?

9 BETH O'SULLIVAN: I want to continue
10 with what you said, because these
11 properties are connected, and they said
12 that they purchased the second one at
13 15 Fennell, then they bought 46 East
14 Genesee Street, all thinking that it was
15 legal to rent this.

16 But it was stated earlier in the
17 record that they purchased 46, they were
18 intending to live in 46 East Genesee
19 Street. So that's different than
20 thinking that they were going to --
21 their intention initially was to live
22 there. So I think that that changes
23 that a little bit.

24 THE CHAIRMAN: Thank you.

25 MR. BALESTRA: Were the minutes for

1 Opening 46 East Genesee

2 -- the minutes for 46 were made a part
3 of the record, correct?

4 MR. GALBATO: They were.

5 THE CHAIRMAN: Yes.

6 MR. BALESTRA: That record is the
7 joint record for these three appeals,
8 6, 15 and 46?

9 MR. GALBATO: Yes, all the minutes
10 for all three properties, whether it's
11 Planning, Zoning Board or Board of
12 Trustees have been made part of the
13 minutes.

14 MR. BALESTRA: I want to just be
15 clear on the record this application for
16 an appeal, that once again everything
17 that was discussed for the, frankly for
18 the other two, for both of them, 6
19 Fennell Street and 15 Fennell are made a
20 part of this record on everything that's
21 in the record for those is hereby
22 incorporated by reference into the
23 record for this proceeding.

24 MR. GALBATO: Is that agreeable,
25 Mr. Fogel?

1 Motion 46 East Genesee

2 MR. FOGEL: That's fine.

3 MR. EGGLESTON: One final statement.

4 In all the motions for all three
5 properties there was never a condition
6 that the properties be owner-occupied as
7 part of the site plan approval or
8 special use critical impact permit that
9 were granted.

10 THE CHAIRMAN: Anything else? I
11 will move, make a motion to close the
12 second hearing, and we'll vote.

13 (All voted yes to close the hearing).

14 THE CHAIRMAN: I'll entertain a
15 motion.

16 MR. BALESTRA: Just for the record
17 on this appeal August 7, 2015, the Code
18 Enforcement Officer sent a letter to
19 Rick Moscarito in Fingerlakes Luxury
20 Homes, Inc., for 46 East Genesee Street
21 advising that the Code Enforcement
22 Officer is in receipt of specific
23 complaints regarding short term rentals
24 or transient occupancy of the property
25 for period of less than 30 days.

1 Motion 46 East Genesee

2 The Code Enforcement Officer

3 requested that the owner cease & desist
4 from the practice of short term/vacation
5 rentals/transient occupancy of less than
6 30 days.

7 On September 28, 2015, Fingerlakes
8 Luxury Homes, Inc. submitted an
9 application to appeal the cease & desist
10 order through the Applicant's attorney.
11 The Notice of Appeal allegations vested
12 rights by the Applicant.

13 And I'm using the property for
14 transient occupancy of less than 30
15 days. This property is in the Downtown
16 D District. The Code Enforcement
17 Officer stated previously that he
18 conducted a search of the records, and
19 there is no Special Use Permit for this
20 property, particularly to be used for
21 transient occupancy.

22 There are five uses under our Code
23 which provide for transient occupancy,
24 being: Bed and breakfast home stay,
25 hotel, motel, lodging and rooming house.

1 Motion 46 East Genesee

2 All of those require a Special Use
3 Permit as conditional uses in Downtown
4 District. And as stated again, there is
5 no Special Use Permit for this property.

6 It's my opinion that the cease &
7 desist letter was sent appropriately and
8 that it ought to be affirmed, and the
9 appeal ought to be denied.

10 Given the fact that no Special Use
11 Permit has been obtained by the owner to
12 use this property for transient
13 occupancy, and given the allegations in
14 the cease & desist letter, based on
15 complaints that it is being used as
16 such, it would appear to me that the
17 cease & desist letter was appropriately
18 sent and that the interpretation of the
19 Code in the cease & desist letter by the
20 Code Enforcement Officer was accurate.

21 Except to the extent that the Code
22 Enforcement Officer noted that the use
23 of the transient occupancy, this use is
24 prohibited in the Downtown District, in
25 fact it's a conditional use requiring a

1 Motion 46 East Genesee
2 Special Use Permit.

3 And so to the extent that if the
4 cease & desist letter is affirmed, it
5 should be affirmed as so modified. It's
6 my opinion it should be affirmed. Like
7 I said, there was no Special Use Permit,
8 therefore if it's being used in that
9 manner, it would be illegal under the
10 Code as I interpret it tonight. And I
11 would welcome any comments from the
12 Board.

13 MR. BADAMI: I concur.

14 THE CHAIRMAN: Concur.

15 MR. COVILLE: Agree.

16 MR. PARDEE: I agree.

17 MR. BALESTRA: I would like to make
18 a motion we deny the appeal of
19 Fingerlakes Luxury Homes, Inc. and
20 affirm the Code Enforcement Officer's
21 cease & desist order, dated August 7,
22 2015, as being correctly issued because
23 the Special Use Permit has not been
24 issued for the property permitting it to
25 be used as a bed and breakfast home

1 Motion 46 East Genesee
2 stay, lodging, hotel, motel, rooming
3 house. The Zoning Law does not allow
4 transient occupancy in property located
5 in the Downtown D District unless a
6 Special Use Permit is first obtained
7 from the ZBA.

8 Note further the cease & desist
9 letter stated that the use of property
10 for short term rental is prohibited.
11 This decision acknowledges that the use
12 in question is actually conditional,
13 meaning that the use in question is
14 permissible so long as a Special Use
15 Permit has first been issued as such.

16 It is my recommendation in this
17 motion that the cease & desist letter be
18 affirmed, as modified.

19 Finally, the ZBA noted the Code
20 Enforcement Officer did a search of the
21 Village records to confirm there is no
22 Special Use Permit associated with this
23 property.

24 MR. PARDEE: I'll second.

25 THE CHAIRMAN: I'll vote.

1 Vote on 46 East Genesee

2 (All voted in the affirmative).

3 THE CHAIRMAN: Thank you very much.

4 UNIDENTIFIED MALE: Just a comment,

5 I think it's Commercial C rather than

6 Downtown D.

7 MR. BALESTRA: No.

8 THE CHAIRMAN: Thank you, very much.

9 Make a motion we officially close the

10 November 24, 2015 meeting.

11 (All voted in the affirmative).

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REPORTERS C E R T I F I C A T E

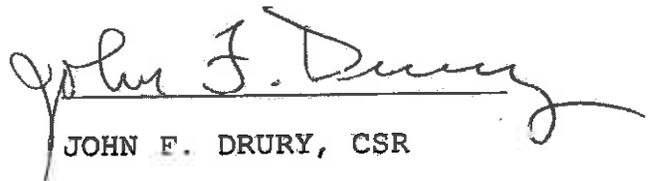
I, JOHN F. DRURY Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.


JOHN F. DRURY, CSR