

**EXHIBIT D**

**JANNARONE  
DISCUSSION OF KOPALD'S CLAIMS**

**1. Kopald claims that the Tonneson's do not have access from a town road and therefore should have obtained a Town Law § 280-a variance from this Board.**

- 1.1. She doesn't allege any injury from this claim unless her aim is simply to somehow prevent the lawful use of the Tonneson property.
- 1.2. First, she claimed that Hemlock was not a Town road at all. But, we have evidence that the Town Board accepted the Offer of Dedication for Hemlock Street and Cherry Street on July 19, 1968, with the consent of the New York State Department of Transportation
- 1.3. Then, she claimed that Hemlock is not a Town road because there is a 3-foot gap where Hemlock meets Poplar. But, her own evidence shows that it does.
- 1.4. Even if her own evidence didn't contradict her statement, this Board accepts the field survey submitted by Tonneson's surveyor over the analysis submitted by Kopald's surveyor – especially since the documentation attached to Kopald's surveyor's analysis doesn't support what he concludes. It shows no gap.
- 1.5. Finally, we have testimony from the prior Town of Highlands Highway Superintendent that Hemlock is a Town road by deed, 2 or 3 surveys the Town did. He stated that when the Town had to get easements for water lines they didn't need one because of a 3-foot gap on Poplar Street.
- 1.6. Finally, Hemlock has been used and maintained by the Town for decades. It is a Town road by use.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT HEMLOCK IS NOT A TOWN ROAD?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]

Joseph Murphy, Member                    [   ]                    [ √ ]  
Joe McCormick, Member                    [   ]                    [ √ ]

2. **Many of Kopald alleged injuries relate to her claim that Tonneson required an erosion control permit and because he didn't get one, trees were illegally cut down.**

- 2.1. First, the purpose of the erosion control law is to prevent unnecessary destruction of trees and other vegetation. No erosion control permit is required for excavations of basements and footings for single family houses or septic tanks, because that generally requires necessary tree removal. Generally, when you clear an area for a single family house, you have to cut down trees. That's why single family homes are exempt from the regulations.
- 2.2. According to the Building Inspector's Affidavit in the Article 78, the "clearing of trees...appeared to be no more and no less than what is usual and necessary to construct a house and appurtenant utilities." I believe the Building Inspector, who was on site multiple times.
- 2.3. I'm sure that when the forest was cleared for Kopald's house, and all of her neighbor's houses, land was cleared and trees were cut down, some of them larger than 10 inches DBH.
- 2.4. But, Kopald claims that the real trigger for needing an erosion control permit is that more than 3 trees 10 inches DBH or greater were cut down.
- 2.5. Michael W. Finkbeiner, a professional land surveyor, was hired by Kopald to surveil the Tonneson property via drone 3 times between September 2019 and January 2020, and he supports her claims about the trees.
- 2.6. But, I don't find his analysis convincing and have a statement I want to read into the minutes.
- 2.7. She also claims that if Tonneson had to go through the erosion control process, they would have heard her complaints and caused the Tonneson to move the house further away from her land.
- 2.8. First, there is no public hearing requirement for an erosion control permit. In general, single-family home construction does not trigger such a hearing – it doesn't even require a site plan approval from the Planning Board. And, even if there was a public hearing and

Kopald had her say, there is no way to know that the Tonneson house would have been relocated. Information submitted by Tonneson tend to show that the house is on a relatively flat part of the Tonneson land. Also, Kopald admits that the Tonneson property is sloped – her house is 60-feet higher and one of her claims is that the driveway is too steep for fire equipment, which tends to support Tonneson’s evidence of flat area.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THE TONNESON’S WERE REQUIRED TO OBTAIN AN EROSION CONTROL PERMIT?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**3. Kopald claims that because of the “gash in the mountain,” she pays more for heating and cooling.**

3.1. Kopald claims that the “huge gash” in the mountain has caused more light to shine on her house, which she finds “annoying and intrusive visually,” increases her cooling bill, decreases her property value, apparently killed all the fireflies because they, and all of the animals she normally sees in the Spring “are completely gone” and there are “many more mosquitos” on her property.

3.2. First, I don’t see any evidence of a “huge gash” in the mountain right “up to the end of her yard.” Her photos show a house clearing for Tonneson and, once I looked at Google Maps for myself, there is also a clearing for the McCarthy house, constructed during the same period. Neither clearing is “up to the end of her yard.” The basis for her claim just isn’t true.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THERE IS A HUGE GASH IN THE MOUNTAIN THAT CAUSES MORE LIGHT TO SHINE ON HER HOUSE?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**4. Kopald states that she is annoyed by noise.**

- 4.1. Everyone is annoyed by temporary construction noise. And, I want to add that McCarthy was building a stick house at the same time Tonneson was building a modular home (stick houses built on-site are probably a lot noisier than modular homes built off-site and only assembled on-site).
- 4.2. Also, based on a discussion with the building inspector, McCarthy had to do hammer his foundation out of rock, so that must have been really noisy. So if Tonneson and McCarthy were building at the same time, how can all of the noise be attributed to Tonneson? It can't be. If you look at the larger view of the properties on Google Maps – the McCarthy house is not that much further away from Kopald than the Tonneson house.
- 4.3. Kopald also complains that she can now hear rail and traffic noise because of the Tonneson house, but offers absolutely no proof of that. Kopald's house is 1000 feet from Route 9W and 3000 feet from the railroad as measured on Google Maps (a direct line through the Tonneson property). Between Kopald and any noise from the road or the railroad is forest and neighborhoods containing many other houses. It does not seem reasonable that the addition of one more house between Kopald and Rt. 9W or the railroad would increase the noise she can hear.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT BECAUSE TONNESON CLEARED TREES ON HIS PROPERTY SHE CAN NOW HEAR ROUTE 9W AND THE RAILROAD WHERE SHE COULD NOT HEAR SUCH NOISE BEFORE?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**5. Kopald claims that the Tonneson construction has driven the animals from the forest.**

5.1. She also claims that because the forest has been “decimated” – her word – she hasn’t heard or seen any animals, they “are completely gone.”

5.2. While animals may temporarily avoid a construction site, there is simply no basis to assume they will flee a forest because one house is built within 14 acres of forest. This claim, along with the other similar claims about fireflies and mosquitos, is simply preposterous.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THE TONNESON CONSTRUCTION DROVE THE ANIMALS FROM THE FOREST?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**6. Kopald claims that electromagnetic radiation in her house has increased because of the Tonneson construction.**

6.1. Also, the Tonneson house was not even occupied when she made this appeal. So, even if there has been an increase in electromagnetic radiation in her house it would be more reasonable to conclude that it was from one of her other neighbors, like her neighbor’s house at 93 Forest Hill Road, which is 57 feet closer to her house than the Tonnesons’ house – 225 feet versus 282 feet.

6.2. Finally, it seems a little disingenuous to allege harm because of electromagnetic radiation when you pay for Drone surveillance on or near your property. Drones are controlled by electromagnetic radio frequency signals.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT BECAUSE OF THE TONNESON CLEARING THERE IS MORE ELECTROMAGNETIC RADIATION IN HER HOUSE?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**7. Kopald finds her neighbor’s house “annoying and intrusive visually” and has devalued her property.**

7.1. First, if everyone who found the sight of a neighbor’s house “annoying and intrusive visually” were allowed to challenge the existence of that house, zoning boards and courts would be overrun.

7.2. She provides a photograph to show how intrusive the Tonneson house is. She states that it was taken from the deck off her bedroom. But, it does not appear that the photograph is taken from a distance of 282 feet, which is, by Kopald’s own testimony, the distance

between her house and the Tonneson. It appears to have been taken at a much closer distance or with a telephoto lens. Also, the picture is taken straight-on, not at elevation. So, it doesn't seem to be proof of visual intrusion because of tree loss. In fact, the photo clearly shows trees and forest between the location of the camera and the Tonneson house.

7.3. There is simply no credible evidence of a "huge gash in the mountain" or the "tree line" up to her property as she states. It just isn't there. There is a house clearing on 14 acres of otherwise densely forested property.

7.4. She hasn't offered any proof whatsoever that her property has been devalued by the Tonneson house.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THE TONNESON HOUSE IS VISUALLY INTRUSIVE BECAUSE OF THE TREE CLEARING AND BECAUSE IT IS TOO CLOSE TO HER HOUSE?**  
**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT HER HOUSE AND PROPERTY HAS BEEN DEVALUED?**

	Yes	No
Jack Jannarone, Chairman	[ ]	[ √ ]
Ray Devereaux, Deputy Chairman	[ ]	[ √ ]
Daniel Zint, Member	[ ]	[ √ ]
Joseph Murphy, Member	[ ]	[ √ ]
Joe McCormick, Member	[ ]	[ √ ]

**8. Kopald claims that the Tonneson's required a Stormwater Pollution Prevention Plan (SWPPP).**

8.1. Tonneson would have required a SWPPP for subdivision approval, which isn't relevant her, or where one or more acres of land had been cleared.

8.2. Both Kopald and Tonneson submitted evidence on this question. Kopald submitted an analysis conducted by drones surveillance (aerial mapping and photography) compared to a 2017 New York State topographic map of Orange County and 2016 New York State aerial survey. She contends that over 50,000 square feet of land was cleared.

- 8.3. Tonneson submitted a field survey showing that Tonneson cleared 17,250 square feet for the building and associated leechfield and apparatus and another 19,250 the 50-foot ROW at total of 36, 400 square feet or .838 acres. First, a field survey is, in my opinion, more accurate than a drone analysis.
- 8.4. Even so, Kopald doesn't claim any injury that a SWPPP would have addressed anyway. Stormwater does not flow uphill.
- 8.5. So, really, neither erosion control regulations nor the stormwater management regulations, if required, would have prevented the type of injuries claimed by Kopald, primarily because her property, as noted, is uphill from Tonnesons' house.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THE TONNESON'S CLEARED ONE OR MORE ACRES OF LAND AND, THEREFORE NEEDED A SWPPP APPROVAL?**

	Yes	No
Jack Jannarone, Chairman	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Ray Devereaux, Deputy Chairman	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Daniel Zint, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Joseph Murphy, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Joe McCormick, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]

**9. Kopald also claims that the Tonneson's driveway does not meet the fire code.**

- 9.1. Again, none of her alleged injuries are related to this claim. So, I'm not sure how she has been hurt by a driveway that is on a slope greater than 10%.
- 9.2. Also, her own expert admits that a driveway in excess of 10% can be approved by the Fire Chief, which we have evidence that it was. The Fort Montgomery Fire District Fire Chief also has stated that he and one of his officers visited the Tonnesons' property with one of the district's "biggest apparatuses" and confirmed that the angle of approach and the turn-around area was more than sufficient for emergency response. We also see the emergency vehicle turn-around in the photos submitted by Tonneson.

**DOES THE BOARD FIND THAT MS. KOPALD HAS FACTUALLY SUBSTANTIATED HER CLAIM THAT THE TONNESON’S VIOLATED THE FIRE CODE BECAUSE THE DRIVEWAY SLOPE EXCEEDED 20%, OR EVEN IF IT WAS, THAT THE DRIVEWAY WAS APPROVED BY THE FIRE CHIEF?**

	Yes	No
Jack Jannarone, Chairman	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Ray Devereaux, Deputy Chairman	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Daniel Zint, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Joseph Murphy, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Joe McCormick, Member	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]