

MEMORANDUM

TO: Members of Planning Board & Land Use Counsel

FROM: Richard M. Litman

SUBJECT: 1011 Greacen Point Road

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For your information:

Section 7-712-a of New York State Village Law outlines procedure for Board of Appeals applications or referrals. Municipal Boards are clearly permitted to refer matters to said Board.

Local precedent:

A number of years ago, a developer built three houses in the 1000 block of Grove Street, adjacent to each other on one lot. The Village Building Inspector issued a Certificate of Occupancy for all three houses. The developer then sold one of the houses and retained the other two. The Planning Board rejected his application to sub-divide the property (application due to divided ownership) for several reasons even though the Building Inspector had approved. There was an illegal structure in the rear yard; the houses did not have adequate side yards as required by Village Code; and the basements contained habitable space with window wells and no secondary exit as required by code. So, even though the Building Inspector approved this property with clear code violations, the Planning Board overrode his decision and disapproved the developer's application to sub-divide. The developer sued the Village, the Planning Board and the individual members of the Planning Board (indemnified). He lost in court more than once.