Town of China

571 Lakeview Drive; China, Maine 04358
(207) 445-2014 info@chinamaine.org

To: Town of China Board of Appeals

From: William Butler, Code Enforcement Officer Wm Butler

Date: July 15, 2020

Re: 83 9th Fire Road Appeal Brief and Supporting Information

In response to the appeal submitted by Eaton & Peabody attorney David Pierson, on behalf of Brent Chesley, I provide the following.

TITLE, RIGHT, OR INTEREST. Brent A. Chesley and Cathy B. Young own the property located at 83 9th Fire road and described as Tax Map 52, Lot 19 of the Town of China Tax Maps. The property is registered in the Kennebec County Registry of Deeds under Book 7931 Page 142 dated April 30, 2004. Attached as Exhibit 1 is the property card.

ZONING. Approximately 75% of the parcel is located within the Resource Protection District with the remainder adjacent to China Lake within the Shoreland Zone District. The on-site structures include a single family dwelling and a barn. The barn is in the Resource Protection District and approximately ½ of the house is within the Resource Protection District with the remainder in the Shoreland Zoning District. Both structures are defined as non-conforming structures and uses in accordance with Chapter 2 of the Town of China Land Use Development Ordinance. Attached as Exhibit 2 and Exhibit 3 is the aerial photograph and the definitions of non-conforming structure and use.

APPROVED PERMITS. On June 18, 2019, CEO Mitnik issued a building permit (#2019-052) for adding onto the non-conforming single family dwelling. On September 16, 2019, a CEO Permit (#2019-103) was issued to Brent Chesley for earth-work. Attached are the two permits as Exhibits 4 and 5 respectively.

SHEET METAL RETAINING WALL. It was my initial opinion that the nine foot high sheet metal retaining wall did not require a town permit since its design and construction had been approved by Maine Department of Environmental Protection and retaining walls are at least partially within the resource. I requested on January 14, 2020, upon receiving verbal complaints and inquiries from neighbors and China Lake Association Members, a determination from the Planning Board whether a planning board permit is required. The Planning Board decided a planning board permit was required. On January 15, 2020, I sent an email to Brent Chesley and Al Hodsdon (designer of sheet metal retaining wall) informing both of the planning board's decision. Attached as

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Exhibit 6 are the planning board minutes for January 14, 2020, Exhibit 7 is the email correspondence to Brent Chesley, and Exhibit 8 is a copy of the application.

On April 9, 2020, Brent Chesley submitted a CEO Permit application for a 9 foot high retaining wall. On April 13, 2020, I notified him via email that his check and application will be returned to him. Attached as Exhibit 9 is the April 12, 2020 email which includes corresponding emails.

A short time after communicating with Brent Chesley that his application and fee will be returned, I received several phone calls from Brent Chesley's attorney (David Pierson). We ultimately agreed that Brent Chesley would modify his application and resubmit for review. I cautioned Attorney Pierson that it is unlikely the application can be approved. On April 29, 2020 Brent Chesley submitted the same application and fee with no apparent modifications. On May 6, 2020 I denied the permit application. Attached as Exhibit 10 is the permit denial letter. The denial letter was sent to Brent Chesley by regular mail and email.

SUMMARY

I agree with the China Planning Board that the 9 foot high sheet metal retaining wall requires a planning board permit. Fortunately, a portion of the retaining wall is within the normal high water mark of China Lake otherwise it is unlikely a permit could be issued since structures above the normal high water mark are restricted in both height and location from the resource. The larger question for me and probably for the Board of Appeals is why Brent Chesley is so adamantly opposed to review by the China's Planning Board. It seems the simplest and most appropriate course of action.