

ZONING BOARD
OF
APPEALS
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
SEPTEMBER 17, 2012
7:15 P.M.**

TOWN HALL ANNEX - MEETING ROOM A

PRESENT: Sally Poundstone, Chairwoman; Timothy Meyer, Vice-Chairman; John Comiskey, Secretary; Albert G. Nickel; Brian Lilly; Libby Bufano; Joe Fiteni, Alternate

ABSENT: Steven Davidson

A. CALL TO ORDER

Ms. Poundstone called the meeting to order at 7:15 P.M.

B. PUBLIC HEARINGS

1. #12-07-16 ARAVENA 21 OREMS LANE

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Comiskey, Fiteni, Meyer, Nickel, and Poundstone. Ms. Poundstone said that this hearing had been continued from the July meeting and the five members who had heard the first portion of the testimony were present at this meeting.

Present were Tracy DePaulis and Daniel Aravena, applicants/owners.

A question was asked regarding whether it was necessary to read the legal notice into the record. Mr. Nerney explained that due to the fact that this is a continuation, reading the legal notice into the record was not necessary.

Ms. DePaulis said that originally, she and her husband were requesting a variance for an addition above the currently existing garage and two variances for a patio and one for a central air conditioning unit. However, at this time, she and her husband are only requesting two variances; one for the above the garage addition and one for the patio. A

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decision was made to place the central air unit on top of the patio, if granted. A way was found to do this. When asked, Ms. DePaulis said that the central air conditioner would be moved to the other side if the variance for the patio was granted. She added that they had decided to reduce the size of the patio, which means they only need one variance for the patio. She then passed around an updated drawing to the Board members.

Mr. Nerney pointed out that the central air unit was originally going to be placed 8.9 feet from the line and the new drawing has the unit relocated behind the garage. This would place second story addition at 12.9 from the property line and move the unit behind the set back line. He added that it appears that the patio had been reduced in size to be 20 feet back from the side set back line instead of the 12.5 that was originally proposed. This eliminates two of the variances, the variance for the second story addition will remain unchanged along with the setback for the patio on Orems Lane.

Ms. Poundstone asked how this would be documented. Mr. Nerney replied that the applicant has the ability to withdraw variance requests. It should simply be noted for the record that the applicant has chosen to withdraw two of the applications and then vote on the remaining applications.

Ms. Poundstone asked Ms. DePaulis if there was anything else that she wished to present to the Board. Ms. DePaulis said that she had four more letters from neighbors in support of these requests, including one from a church. She said that she also had spoken with her neighbor and offered to plant privacy trees along with moving the central air unit and eliminating some of the windows. There was no response regarding these issues, but Ms. Krupenye was present at the hearing.

Mr. Nerney said that these letters were the only copies and therefore should be submitted into the file. He then went on to state that he would not necessarily recommend that the ZBA attach conditions with any approval they approve.

Ms. DePaulis then said that she had proposed to replace the asphalt driveway with pavers in order to significantly reduce the onsite coverage.

Ms. Poundstone asked whether anyone wished to speak for or against the application.

Atty. Doug Bayer came forward and said that he represents Ms. Lucy Krupenye, who is the next door neighbor to the Aravenas. He noted that he previously submitted a letter to the Board regarding Ms. Krupenye's position.

He added that he wanted to make two points; first that the two criteria for a variance was that there was a hardship and secondly, that the hardship is within the zoning regulations. He said that there were three or four areas that would impact his client, such as how close the addition would be to his client's house. If the addition is approved, it will add living

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space that much closer to the property line. This will have significant impact on his client.

Atty. Bayer then mentioned that there were two factors involved: the size of their lot and the fact that they don't have enough space for their comfortable living. The previous variances that had been granted before has increased the size of their structure to be larger than many others on conforming lots. He pointed out that the fact that there was not sufficient room for their living does not fall under the definition of hardship. He then submitted copies of a 2009 Supreme Court case regarding hardship and the ability to build to modern standards for comfort is not a hardship by the law.

He concluded his remarks by requesting that the Board deny the applications for the variances. Ms. DePaulis asked if she could respond. Ms. Poundstone indicated that she would have the opportunity to respond at the conclusion of the hearing.

Ms. Krupenye came forward and said that she had lived in her home with privacy for over 12 years. She said that she had been assured that when she purchased her home that there would be no encroachment due to the strict zoning regulations. This changed when the house at 21 Orem Lane was purchased by its current owners and put an addition on in 2007. That had a significant impact on her home and property. Now, the Aravenas are requesting more variances that would have an exacerbating impact the addition has already cause her. Before the addition was constructed, there was a hardship since it was a very small house, but this is no longer the case. The house is on less than a quarter of an acre and has already had seven variances granted, allowing them to add two more floors, which tripled the living space.

Ms. Krupenye pointed out that the Aravena's house has the same footprint as her home. The original homes did have attics, but new construction now has living space on the third floor. She said that the addition above the garage would cause an immediate hardship for her since anyone living at her house would oppose this variance request. She expressed her concerns regarding the garage addition and went on to speak about how the Aravena's are inconsiderate neighbors. A legal agreement was drawn up between Mrs. Krupenye and the Aravena's that included a condition that they would not build over the garage. However, it is clear they did not intend to comply with that. This agreement is filed with the land records. Ms. DePaulis had agreed to put in privacy trees, but never did.

Ms. Poundstone reminded Ms. Krupenye that the Zoning Board of Appeals had nothing to do the legal agreements between the two parties.

Ms. Krupenye went on to say that she had concerns based upon the Aravena's previous actions such as blocking the entrance to her driveway. Ms. Poundstone stated that she did not believe this was germane to the variance application. Ms. Krupenye disagreed and

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said that Mr. Aravena had said if she did not agree to the variance, he would block her in. Mr. Aravena said that this was a false accusation. Ms. Poundstone told him that it wasn't time for him to speak.

Ms. Krupenye said that her concern was that since the 2007 addition had been added, there were floodlights shining into her yard. Another addition could have floodlights shining into her home and her back yard. She went on to mention the two small dogs owned by the Aravena's which she claimed bark constantly. The garage acts as a buffer space, but if the addition was approved, that would bring the living space that much closer.

Ms. Krupenye said that she was concerned about the value of her house since no other houses in the neighborhood has another house this close or is impacted this way. She then thanked the Board members for their time and consideration.

Ms. Poundstone asked if there was anyone else present who would like to speak for or against the application. Ms. DePaulis came forward. Ms. Poundstone requested that she be succinct.

Mr. Meyer pointed out that issues such as flood lights and parked cars were not germane to the applications. Ms. DePaulis said that she did have hardship and it was the same hardship that she had back in 2007 with her last variance request. Ms. Krupenye has been granted a variance to build over her garage. She then produced a photograph showing Ms. Krupenye's garage and said that this is the same thing that she wants. Ms. DePaulis said that she had made various offers to Ms. Krupenye, but she keeps on going forward with this issue. Mr. Nerney asked if this photograph was being submitted into the record. Ms. DePaulis said it was.

Ms. DePaulis asked how Ms. Krupenye's addition was granted when her garage is so close to the Aravena's property line. She pointed out that the windows on Ms. Krupenye's property look directly into her property.

Ms. Poundstone thanked Ms. DePaulis. Ms. DePaulis said that she would like to submit some letters from Ms. Krupenye where she thanked Ms. DePaulis for the removal of the floodlights and thanking her for silencing the dogs. Ms. Krupenye objected. Ms. DePaulis pointed out that the letters were in Ms. Krupenye's handwriting. Ms. Poundstone called the meeting back into order. Ms. Poundstone said that the questions and comments are to be directed to the chair.

Ms. Poundstone asked if there was anyone else who would like to speak to the application.

Atty. Bayer then came forward to respond to Ms. DePaulis' remarks. He said that the

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granting of a variance for anywhere else, including his client's property, is irrelevant to the application before the Board. He said that this should be noted for the record. Secondly, the fact of the matter was that even if the size of the lot was a hardship in 2004, that original house no longer exists. The property now sustains a use that is allowed on the zone. The lot is being used in a consistent manner with the zoning regulations. Therefore a claim that the lot is undersized is not a hardship.

Ms. Poundstone pointed out that the variance had been granted in 2007. Atty. Bayer conceded that he may have incorrectly stated the date. The owners purchased the lot in 2004 and the variances were granted in 2007.

Mr. David Genovese came forward and said that he was present in support of Ms. Krupenye. He said that he had been before the Board when the last round of variances had been granted. He said that he had proposed a large compound immediately adjacent to Ms. Krupenye's property and that he had worked closely with Ms. Krupenye and negotiated a compromise for the significant development. He said that there was a lot of history between these two neighbors, but that he found Ms. Krupenye willing to compromise.

Ms. Poundstone asked if there was anyone else who wished to speak. Ms. Krupenye came forward and said that the letter regarding the floodlights and the dogs was written over five years ago. She said that when she built her addition, she was respectful to the Aravena's and did not put any windows on their side. The addition above the garage is merely a deck, however theirs would severely impact her property.

Ms. DePaulis came forward and said that the photographs show that there were windows facing their backyard. Ms. Poundstone said that the Board was not present to discuss windows or dogs. These are not germane to the application. She went on to say that both parties have had ample opportunity to express their feelings, but she wanted to hear facts.

Ms. DePaulis said that Ms. Krupenye had been granted a variance that allows her to overlook her entire back yard. She also pointed out that there had been several variances granted to other residents on Orems Lane. She said that she was requesting this in the spirit of fairness.

Mr. Lilly then asked if there had been any opposition to any of the other variances granted on Orems Lane. Ms. DePaulis said that the only person that opposed any variances was Ms. Krupenye.

Mr. David Jeffries came forward and said that he approached all the neighbors when their development went in before they applied to the Zoning Board of Appeals. Ms. DePaulis said that she had never been contacted.

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Mr. Nickel said that at the last hearing, there had been a suggestion to move the central air unit to the other side of the house, but it was only moved to the side of the garage. Ms. DePaulis said that they had tried to do this, but it was not possible. By putting it on the other side of the garage, it would reduce any noise. Central air units make very little noise.

There being no further comments, the public hearing was closed at 7:49 P.M.

2. #12-09-20 GABORIAULT HONEY HILL ROAD

Ms. Poundstone called the Hearing to order at 7:49 P.M. She stated that she had received a letter from the Attorney Healy requesting that the hearing be continued. Mr. Comiskey to Connecticut General Statutes, Section 8-11, Conflict of Interest and details of the application and the hardship as described on the application.. Mr. Nerney read the legal notice dated August 28, 2012.

Ms. Poundstone reiterated that Attorney Healy had requested that the hearing be continued to October 15th, and asked if there was anyone present who wished to speak to the Board about the application.

Mr. Thomas came forward and stated that his name was Frederick A. Thomas and that he lived at 19 Mayapple Road for the record. He said that he was a 500 foot notice neighbor and was present in reference to the application and the events surrounding it. These events will be taken up in a more extensive form.

He then asked Ms. Poundstone if his comments at this time would be prejudicial to his ability to speak after the applicant at the next meeting. Ms. Poundstone replied, “Not at all.” He then said for the record this his comments would not be prejudicial to his ability to speak after the applicant. Ms. Poundstone replied that they would not be.

Mr. Thomas then made the following statement: “This crusade will start tonight on this. Uhm, it will go beyond this. It’s not about this application. Part of this will be beyond this application if the words provided to the neighbors as they did their due diligence.”

Mr. Thomas then stated that the lot was an unbuildable lot as of 1946 and this needs to be clear. Many neighbors believe that this lot is not buildable as of 1946. The words spoken to the neighbors prior to this hearing that suggested that it was a prior existing, non-conforming lot called into question a great many things, particularly when neighbors were led to believe that it was a non-conforming, pre-existing lot when the public record indicates otherwise. The matters as of the public record are robust and clear. Mr. Thomas stated that “we” feel sad for the applicant because the applicant was so misled by whomever did their due diligence in order to have this application come forward and perpetrate against this committee, this Board, and this Town something other than what

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appears on the record. Mr. Thomas said as of record here, “we” would be addressing two questions after which he would stop for the evening.

He then demanded to know whether the deeds, records and all materials organized as part of the record without including copies. Ms. Poundstone replied that she believe that they were. Mr. Nerney confirmed that everything that was submitted has been made available to the Board and is part of the record.

Mr. Thomas then asked for the record if a reference and a deed restriction to Map No. 2338 indicating that the parcel is a parking lot, as of record, appears to this Board as sufficient to be in the record or would Mr. Thomas need to produce Map No. 2338. One of the Commissioners attempted to answer the questions, but Mr. Thomas cut him off by saying that he was addressing the Zoning staff member as a witness. Mr. Nerney said that he thought it would be up to Mr. Thomas to decide what he wished to submit. Mr. Thomas reiterated the question as to whether a reference to Map 2338 in the deed of record for the Board. Mr. Nerney replied that whatever was submitted is in the record.

Mr. Thomas then wished to know if a deed that was part of the record submitted, why this ranking town employee wouldn't know. Mr. Nerney reiterated that if the document had been submitted, it would be part of the record and would be considered by the Board. Mr. Thomas then made the following statement: “So Map No. 2338 is referenced as both the applicant took the property subject to Map No. 2338.” Mr. Nerney replied that this was not a court of law, but Mr. Thomas disagreed. Mr. Nerney said that Mr. Thomas was being very aggressive and suggested that he be a little more civil in his approach. Mr. Nerney concluded that he had been in his position for ten years and never had seen anyone with this attitude.

Mr. Thomas replied that just because one may have done a background and done their due diligence, does not mean that they are aggressive, but that they would like to understand the process. So, he then reiterated his earlier statement regarding if a deed was referenced a map, whether the map would need to be produced at the hearing. Mr. Nerney replied that Mr. Thomas should produce whatever evidence Mr. Thomas felt he needed to supply. If Mr. Thomas felt that whatever has been submitted was not sufficient, then he should produce the necessary evident to support the point that he was trying to make.

Ms. Poundstone then addressed Mr. Thomas that the Board recognized the complexity and added it was an interesting issue. She then added that perhaps the discussion should be held when the applicant was present in order to give the applicant an equal opportunity. Ms. Poundstone said that Mr. Thomas could submit whatever he wished into the record.

Mr. Thomas said that he was hoping to learn as much as possible at the meeting because

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“they” wanted to get ready to present the most clear information possible. He said that “they” did not want to produce the map or all the maps unless it would be helpful. If the maps were already in the record, then they would not produce it again.

Mr. Thomas said that “we” did wish to preserve for the record, for the other counsels that will appear, whatever needs to be in the record for whatever transpires. Ms. Poundstone said that she understood. Mr. Thomas then thanked the Board for their time. Ms. Poundstone said that she would be looking forward to hearing about this on October 15th.

Ms. Poundstone asked if anyone else present wished to speak for or against the application.

Mr. Michael Dragnat of 7 Mayapple Road came forward and greeted the Board. He said that he had adjacent property and strongly opposed the development of this project. He added that he wanted to be on record that he wished to confirm that the Board had received letters dated September 10th and September 14th. Ms. Poundstone said that the letters had been received. Mr. Dragnat thanked the Board for their time.

Ms. Poundstone asked if anyone else present wished to speak for or against the application. Another member of the audience stood and made a comment. Ms. Poundstone requested that he come up to the table near the microphones to address the Board.

Mr. Ed Benison of 91 Honey Hill Road came forward. He said that he wanted to clarify that there should have been an additional letter dated September 17th. Mr. Nerney confirmed that there was a letter dated September 14th from Lisa and Ed Benison, along with a letter from Mr. Dragnat and another letter dated September 10th signed by a number of the area residents.

Mr. Nerney then announced that on continued applications, there would be no further public notice. He asked those present to note the October 15th date and said that the meeting would commence at 7:15 p.m.

There being no further comments, at 8:04 P.M. the public hearing was continued until September 17, 2012.

Mr. Lilly then said that he knew some of the residents on this road and would recuse himself.

3. 12-09-21 WISEMAN

139 HULDA HLL ROAD

Ms. Poundstone called the Hearing to order at 8:04 P.M., seated members Comiskey, Lilly, Meyer, Bufano, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated August 28,

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2012, and details of the application and the hardship as described on the application.

Present was Ms. Wiseman, applicant.

Ms. Wiseman came forward and said that she resides at 372 Homestead Hill and her 94 year old mother resides at 139 Hulda Hill Road. It has been very difficult for her elderly mother during the last two severe storms when there was no power. Due to the number of downed trees, an ambulance could not get to her. Transporting her mother to a warming center was extremely difficult.

Due to these circumstances, Ms. Wiseman was requesting an automatic generator, the installation of two above ground propane tanks and a second story addition to the garage for a home health aide. The placement of the generator and the tanks is dictated by the topography of the site, which has a steep drop into a ravine on it.

Mr. Meyer asked how close the generator would be to the nearest neighbor. Ms. Wiseman said that the generator was 30 feet from the property line and she estimated that the nearest neighbor would be another 60 or so feet beyond that.

Ms. Poundstone asked whether anyone wished to speak for or against the application.

There being no further comments, at 8: 15 P.M. the public hearing was closed.

4. 12-09-22 ECS TRANSPORTATION 390 DANBURY ROAD

Ms. Poundstone called the Hearing to order at 8:15 P.M., seated members Comiskey, Lilly, Meyer, Bufano, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated August 28, 2012, and details of the application and the hardship as described on the application.

Present was Eugene Laurent, applicant/owner.

Mr. Nerney explained that there was a Connecticut General Statute regarding auto dealership licenses. The CGS requires ZBA approval in communities of less than 20,000. He added that the Chief of Police would have to sign off on the permit also. . In order for his company to purchase vehicles at an auction, they need to have an automotive dealer's license.

Mr. Laurent came forward and greeted the Board members. He said that his company, ECS Transportation had moved from Norwalk to Wilton in January. The location was a former furniture business. In order for his company to purchase vehicles at an auction, they need to have an automotive dealer's license. Previously, the vehicles had been

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purchased by another dealer on their behalf, but that dealer has gone out of business. Originally, there were concerns that he might be selling vehicles from the site, but this is not true. ECS has contractual obligations to only have vehicles that are less than six years old in service. This means that his stock is continually being updated.

Ms. Poundstone had concerns about the vehicles being parked on the site. Mr. Nerney reminded everyone that the previously granted approval had indicated how many vehicles could be parked on the site. He added that the site is also screened.

Mr. Comiskey asked about the restaurant license. Mr. Laurent said that there was a coffee shop on the site that was run by his partner and his partner's daughter.

Mr. Lilly asked about the variance remaining with the property if ECS moved to a different location or closed. Mr. Nerney explained that the Department of Motor Vehicles issues the license to the individual.

Ms. Poundstone asked if anyone wished to speak for or against the application.

There being no further comments, at 8:24 P.M. the public hearing was closed.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Poundstone called the Regular Meeting to order at 8:24 P.M., seated members Bufano, Comiskey, Fiteni, Nickel, Lilly, Meyer, and Poundstone and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #12-07-16 ARAVENA 21 OREMS LANE

The Board briefly discussed the application. Mr. Lilly said that the Board had previously granted variances for neighbors, but that none of them involved a dissenting neighbor.

Ms. Poundstone stated said that the definition of a hardship is the binding guideline. She said that she was concerned about the over intensification of this lot along with the other variances granted already.

Mr. Fiteni said that that there was an 1,800 sq. ft. house on the lot. Additions above garages have been done, but there are concerns about the fact that it is so close to the lot line. The lot is not one acre, but is in a one acre zone. While this does not change the setback, it is not in the spirit of the zoning at all. Mr. Nickel pointed out that it would be important to know exactly how large the neighboring house was. Discussion followed.

There have been seven variances granted for this property in 2003 for one project.

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Ms. Poundstone said that the Town's Plan of Conservation and Development speaks to the preservation of neighborhoods and also addresses scale.

Mr. Comiskey pointed out that the parcel is a small lot, and the applicant was willing to reduce the site coverage by using pavers the driveway and removing the patio. He then asked when is a building lot too small. He then read a section regarding non-conforming uses and structures (29-4). Non-Conformities are not to be enlarged upon or extended. He then pointed out that if the ZBA stuck to the Zoning Regulations, the Board would not have approved various applications. Discussion followed about reasonable use and hardships.

The discussion then moved to whether the Board wished to determine the location of the air condition.

Mr. Fiteni said that the legal case that was submitted into the record as a legal opinion is the exact same case.

Ms. Poundstone said that relief has been granted on this particular lot. It is the Board's responsibility to consider the environment of the neighborhood. Mr. Filteni said that he did not see a hardship in accordance with the State statutes.

MOTION was made by Mr. Meyer, seconded by Ms. Poundstone, and carried with three in favor and two against (3-2) to **deny** the variance of Section 29-D to permit the construction of an addition over an existing garage with a rear yard setback of 12.1 feet in lieu of the required 40 feet and the proposed location of the HVAC system as per amended site plan submitted to the Zoning Board of Appeals on September 17, 2012.

MOTION was made by Ms. Poundstone, seconded by Nickel, and carried unanimously (5-0) to **grant** the permit of a patio with a rear yard setback of 12.5 feet in lieu of the required 20 feet and a front yard setback of 13.5 in lieu of the required 20 feet as per amended site plan submitted to the Zoning Board of Appeals on September 17, 2012.

MOTION was made by Ms. Poundstone, seconded by Mr. Meyer, and carried unanimously (5-0) to **deny** the variance of Section 29-5.D the proposed location of the HVAC system as per amended site plan submitted to the Zoning Board of Appeals on September 17, 2012.

Ms. Poundstone noted that the remaining requests had been withdrawn by the applicant.

2. #12-08-20 GABORIAULT HONEY HILL ROAD

Tabled to October 15, 2012.

3. 12-09-21 WISEMAN 139 HULDA HILL ROAD

The Board briefly discussed the application. It was the consensus of the Board that the application was straight-forward. Mr. Meyer pointed out that there has not been any variance activity nor are the neighbors as close to this house where the variance application is subject to. Ms. Poundstone noted that the hardship had to do with the resident and not the site.

MOTION was made by Mr. Nickel, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** the variance of Section 29-D to permit the installation of an automatic generator with a side yard setback of 26.5 feet where 40 feet is required; a side yard setback of 30.1 feet where 40 feet is required to permit the installation of two above ground propane tanks; and a side yard setback of 32 feet where 40 feet is required to permit construction of a second story addition to an existing garage structure.

4. 12-09-12 ECS TRANSPORTATION 390 DANBURY ROAD

The Board briefly discussed the application. Mr. Nerney reiterated that there would be no sales allowed on the site without Zoning approvals.

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried unanimously (5-0) to **grant** the Certificate of Location pursuant to Connecticut General Statutes 14-54 for the purpose of obtaining an automotive dealer's license through the CT Department of Motor Vehicles.

D. OTHER BUSINESS

1. Minutes – June 18, 2012

It was the consensus of the Board to approve the minutes of July 16, 2012 as written.

E. ADJOURNMENT

MOTION was made by Mr. Fiteni, seconded by Mr. Lilly, and carried unanimously (5-0) to adjourn at 9:08 P.M.

Respectfully submitted,

Sharon L. Soltes
Telesco Secretarial Services