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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X

In the Matter of

COUNTRY ESTATES AMENDED SUBDIVISION
(2012-25)

Laurie Lane
Section 40; Block 3; Lots 3.0 & 10
R-1 Zone

----- X

CONCEPTUAL TWO-LOT SUBDIVISION

Date: January 3, 2013
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

----- X

MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
(845) 895-3018

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COUNTRY ESTATES

MR. BROWNE: Good evening. Welcome to the Town of Newburgh Planning Board meeting of January 3, 2013.

At this time I'll call the meeting to order with a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. FOGARTY: Here.

MR. WARD: Present.

MR. BROWNE: The Planning Board has professional experts that provide reviews and input on the business before us, including SEQRA determinations as well as code and planning details. I ask them to introduce themselves at this time.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of

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COUNTRY ESTATES

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Newburgh.

MR. HINES: Pat Hines with McGoey,
Hauser & Edsall Consulting Engineers.

MR. COCKS: Bryant Cocks, Planning
Consultant.

MR. BROWNE: At this time I'll turn the
meeting over to Joe Profaci.

MR. PROFACI: Please join us in a
salute to the flag.

(Pledge of Allegiance.)

MR. PROFACI: As always, please turn
off your cell phones.

MR. BROWNE: The first item we have on
the agenda this evening is Country Estates
Amended Subdivision, project number 2012-25.
This is a conceptual two-lot subdivision being
presented by Ross Winglovitz.

MR. WINGLOVITZ: Good evening. Ross
Winglovitz with Engineering Properties here on
behalf of John K. John, the applicant and the
owner of the two parcels that are the subject of
the application.

What Mr. John is trying to do is get
the two lots approved for one house location.

1
2 These are two lots that were part of a
3 subdivision in 1959. On that subdivision plat
4 when it was filed there was a clear note
5 indicating that these lots were not for building
6 purposes at that time. So back then they
7 actually created lots like that, unlike today.
8 The only way to make them for building purposes
9 is to go refile a map, that I'm aware of, showing
10 that they can -- are acceptable for a house and
11 septic and well.

12 Mr. John's original desire was to have
13 two separate lots but we advised him that that
14 wasn't possible based on all the requirements for
15 setbacks, wells and septic. So we convinced
16 him, and he agreed, to combine the lots into one
17 lot and make application for that as one building
18 lot.

19 I would be glad to discuss the
20 comments. How ever you would like to proceed.

21 CHAIRMAN EWASUTYN: Why don't we follow
22 the outline of your short form where you talk
23 about the side setback, lot width, lot size,
24 variances required and also lot size, side
25 setback and lot width. How do we stand with the

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variances that --

MR. WINGLOVITZ: When I got the comments I took another look at the zoning. I had looked at it originally and I couldn't find the section on exceptions. It took a while today but I did find them. There is a section in the code, Section 185-18, which is for nonconforming lots of record which indicates that lots that are -- let's see here -- existing lots, nothing shall prohibit the use of a lot less than the prescribed area or width when such lot is owned individually and separately from any adjoining tract at the time of enactment of this chapter provided that all the provisions of this chapter are met.

I just had a brief conversation with Michael in the hall regarding that, and I guess the concern is that if there weren't two lots here that that would apply but that doesn't apply because there are two lots. I don't think that's the intent of the zoning. I think the intent of the zoning is to say look, if you have two lots that are undersized next to each other you need to combine them to create one lot. We're not

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going to give you a waiver on this lot and a waiver on this lot. That's exactly what we're doing here. We're going to be required to combine them. I think that's the intent and that's why it talks about individual lots owned separately. The intent is not to give you relief for two lots that are undersized that you own in common ownership. You have to combine them. That's been my experience. When I looked at this in other towns, we've always had to combine nonconforming lots where possible, as long as they were in the same ownership, to get as close to the zoning requirements as we possibly could.

So in looking at that again, I think that this applies and I don't think that we need the area variances, lot width variances or the side yard variance because there is further direction in that section regarding yards that gives us relief when the lot is too narrow but further reduce the lot width requirement by 15 feet. So instead of requiring 30 foot side yards we would only be required to have 15 foot side yards where we have 23. I think that's probably the biggest -- big picture issue in the comments

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that I had outlined on there. If that's not the Board's interpretation, then we will need to go to the ZBA and make that argument there. I think it would only make commonsense to me that I could build on that under this ordinance, why couldn't I build on the two being combined?

MR. DONNELLY: Let me chime in. I'll defer to Jerry because in the first instance it should be his call. I certainly agree with Ross that the intent, in context, is to require -- some ordinances say such lots are deemed merged, so you don't even have to go through the subdivision process but for the issue of the note. However, the language chosen and, you know, I didn't write it, says nothing shall prohibit the use of a lot less than the prescribed area or width when such lot is owned individually and separate from any adjoining tract at the time of enactment of this chapter. I don't even know what that date is but, if in fact we look at the date of enactment of this chapter and those lots were in separate ownership, then clearly what Ross has said applies. They can be merged together, they get

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the benefit of the 15 foot side yard exception and no variances are required. But I don't think we have that information before us. If the Zoning Board or Jerry's office in the past has said well, we know what the language is but we also know what the section is intended to mean, as long as the lots are being merged we have not required variances to be obtained, I can live with that as well. I'm telling you what I see in the language here, and absent either some proof of the date the chapter was enacted, or what the ownership was, or a track record with Jerry's office, or the Zoning Board applying the overall reasoning that you're advancing, my recommendation is that interpretation or the need for a variance is a call for the Zoning Board.

CHAIRMAN EWASUTYN: Jerry, the experience that you may have had or your office has with similar --

MR. CANFIELD: Yes. We have granted in the past, a few times, this 185-18 exception for existing lots of record. I think the key word is existing. Existing lot dimensions at the time the lot was created. We discussed briefly at the

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work session about this. My determination or what I feel that I would recommend to this Board is that this go before the Zoning Board for at least an interpretation. I don't feel that the intent of existing lot of record is intended here, simply because of the fact that we are consolidating. They are now one lot whereas originally they were two. I wouldn't feel comfortable saying that now that we consolidated, that that meets the intent of 185-18. I would feel more comfortable with the Zoning Board at least, or if at least, granting us or giving us an interpretation, or giving the applicant an interpretation.

CHAIRMAN EWASUTYN: Bryant, do you have an opinion on this?

MR. COCKS: I mean I would just echo what Jerry said on that. When I first read through it I thought that they would have to go for all four of these variances. Even with the exception, both lots are clearly smaller than anything we deal with.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: I was just wondering if

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COUNTRY ESTATES

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they were even lots because the original filed map identifies them as not for building purposes at this time.

MR. CANFIELD: I think that's a bigger, greater issue that will greatly impact, you know, dimensions and what's usable and buildable areas. Although you've displayed that you can meet that, the original filed map depicted these lots as not usable.

MR. WINGLOVITZ: 1959. It eventually would need to go to the Health Department again to get the approval for this lot if we get past the threshold issue of the zoning interpretation or the area variances. We would need your preliminary approval to go to the Health Department.

CHAIRMAN EWASUTYN: Why is that?

MR. WINGLOVITZ: Because it was on a Health Department approved plat at the time.

CHAIRMAN EWASUTYN: Okay. Comments from Board Members. Frank Galli?

MR. GALLI: No.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: What would dissolve the

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original note that it's not buildable?

MR. HINES: Filing of a map.

MR. BROWNE: What you're attempting to do with consolidating to make that note go away?

MR. WINGLOVITZ: Yup. File a new map with the Health Department's approval stamp on it and this Board's approval stamp. That's the only thing that makes it go away.

MR. BROWNE: I think with the idea of removing a note like that from that kind of a thing, I would agree that I think it should go to the ZBA for their recommendation or their interpretation or whatever. I don't like the idea to consolidate something and say these notes go away. That doesn't sit right with me.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I think it should go for an interpretation to the ZBA.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I think so, too.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I just have one question. Why in 1959 did they have that interpretation that these were not buildable lots?

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MR. HINES: They probably couldn't meet the percolation at the time. I'm only guessing. There was a drainage course going through here, so it may have impacted whether or not they could get perc. They're proposing right now to make one septic system using an Elgin system that wasn't available at that time. It's a smaller footprint. That's the only reason I can imagine. It's right smack in the middle of this subdivision. There's three parcels identified on this map. It says this lot not approved for building by the New York State Department of Health.

MR. FOGARTY: Just go over -- I mean you have that interpretation of these not being buildable lots. How does that go away?

MR. WINGLOVITZ: You go to the Health Department, get them to say yes, there's a viable septic location on this lot, they approve it and then you come back here for final approval. I've done it a number of times on some stuff that was approved in the '70s and early '80s when they still had that on there. That's the only way we've been able to do it.

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MR. HINES: We would do this right now. It would be combined with one of the adjoining lots and make it become part of that parcel.

MR. DONNELLY: You also need to satisfy the condition of the map note that satisfactory, or whatever the phrase was, drainage be shown.

MR. WINGLOVITZ: What actually happens now is it disappears. It comes on to the lot and goes into a rocky area. There's actually no defined channel the rest of the way down. It just goes into the soil here and disappears. We're going to make it -- we're trying to actually make a provision for it.

MR. FOGARTY: Even by doing all that, when you go before the ZBA you still need these variances?

MR. WINGLOVITZ: I need the interpretation that that section applies, or if they disagree then I'll need the variances.

MR. FOGARTY: Good. Thank you.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comment.

CHAIRMAN EWASUTYN: Okay. Then I'll move for a motion to have Mike Donnelly prepare a

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letter to the ZBA which would cover both an interpretation and/or a list from the review comments that Bryant Cocks provided, a list of the variances that will be needed. So Bryant and Mike Donnelly will work on that.

MR. HINES: Ross, do you have my other technical comments?

MR. WINGLOVITZ: Yes. The rest of the comments are no problem. When I come back from the ZBA I'll --

MR. HINES: Work on those.

MR. CANFIELD: Have you seen the notes that we were referring to?

MR. WINGLOVITZ: Yup. I have a copy. Thank you very much.

(Time noted: 7:16 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: January 18, 2013

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

HICKORY HILL SUBDIVISION
(2011-17)

Hickory Hill Road
Section 47; Block 1; Lot 64.22
R-1 Zone

----- X

SIX-LOT SUBDIVISION

Date: January 3, 2013
Time: 7:17 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: JAMES RAAB

----- X

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MR. BROWNE: The next item we have is Hickory Hill Subdivision, project number 2011-17. This was listed as a six-lot subdivision. It's being presented by Jim Raab.

MR. RAAB: First of all, happy new year everyone.

What we have done, we've taken over the representation of Mr. Domingues from Fine Associates. We have retested the lots and we had decided that at this point in time we're only going to put in a 371 foot private road that will serve three of the four lots we've proposed in this.

Lot 1 will have its own access off of Hickory Hill Road. We know that those access points will have to be approved by the Highway Department.

We're not proposing any lots close to being 40,000 square feet. I think the smallest one is 1.17. That's lot 2.

Basically we're here to see if this is good enough for us to proceed on with the stormwater and get ready for further subdivision.

CHAIRMAN EWASUTYN: Pat Hines, Drainage

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Consultant?

MR. HINES: Our first comment is the proposed private road has a 15 percent grade which is the maximum. It's showing open swales. That's a little steep for open swales.

Also, how the driveways are going to come off that at a 15 percent grade. The slopes of the driveways don't seem to work there. You need to take a look at the grading.

As you mentioned, because it has a private road it kicks in the Town of Newburgh stormwater regulations requiring water quality and quantity control. Just a concern that it doesn't become a flume for water out towards Hickory Hill Road there.

MR. RAAB: The plan is just engineering in the front part of lot 2. We did take a look at the driveways but we know that now you're looking for something, maybe some closed drainage coming down that hill.

MR. HINES: There's a retaining wall that says two foot max.

MR. RAAB: That was a typo.

MR. HINES: It looks six or seven or

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eight feet. Details of that retaining wall will be required. I noted the common property line, it's against that stonewall and that may be half owned by your neighbor.

MR. RAAB: We have to pull that out.

MR. HINES: I'm not sure how that's going to be built.

The septic system on the recap property --

MR. RAAB: That was Eustance & Horowitz who added that note.

MR. HINES: I ask that just because it's a minimum setback. You've got 103 feet or something. If we can get that detail there, that will show us where that is.

Stakeout of the wells. I note that two of the wells are right there at 15 feet on either side of the property corners there.

The highway superintendent's comments for the private road and the driveway.

I think you have some challenges with the private road.

We'll need a stormwater --

MR. RAAB: Okay.

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CHAIRMAN EWASUTYN: Bryant Cocks,
Planning Consultant?

MR. COCKS: The bulk table just needs
to be revised to show the actual dimensions.

Lot 2, which is the corner lot on
Hickory Hill, and the proposed road, that's going
to need to be shown with two front yard setbacks.
The lot depth is shown at 148 --

MR. RAAB: It was adjusted. It never
got changed in the bulk table. That got adjusted
to 150 feet.

MR. COCKS: Okay. And the residential
lot area, you did show the calculations on that.
They just need to be shaded on the plans,
preferably on the one with the topography.

Are you doing this for the access to
the back lot, the cul-de-sac, instead of doing
two flag lot configurations?

MR. RAAB: No, no. Yes, for access --
to the rear lot?

MR. COCKS: Yes.

MR. RAAB: Yes. Not only that but we
are -- Mr. Domingues met about a year ago with
the owner of the rear lot, Mr. Fayo, and they

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agreed for him to give him a right-of-way for any further extension of that road as it's extremely difficult to get in from Black Angus Court. It's even more difficult to get in from Black Angus Court to this back property of Mr. Fayo's than it is coming up this way. They have an agreement that he's going to deed him a right-of-way.

MR. COCKS: That's fine.

The cul-de-sac will need to be bonded.

Town Board approval for the road name will be required.

Storm details to the Orange County Planning Department.

You did mention the Highway Department. That was it.

CHAIRMAN EWASUTYN: Jerry Canfield?

MR. CANFIELD: I have nothing additional.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comment.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no comments.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing at this time.

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MR. MENNERICH: No questions.

MR. BROWNE: No.

MR. GALLI: No.

CHAIRMAN EWASUTYN: Bryant, did we grant conceptual approval on this?

MR. COCKS: No. That was right at the time when the residential lot area calculations were being changed, so they had to come back and resubmit the plans before any action was taken.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion to grant conceptual approval for the -- four-lot subdivision now, correct?

MR. RAAB: It's five counting the residual.

CHAIRMAN EWASUTYN: Five-lot subdivision for Hickory Hill Subdivision and to have Bryant Cocks, our Planning Consultant, circulate to the Orange County Planning Department.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by -- was that Frank?

MR. GALLI: Me.

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CHAIRMAN EWASUTYN: I'll get it right sooner or later. Frank Galli. A second by Ken Mennerich. I'll ask for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

MR. RAAB: Thank you very much.

(Time noted: 7:22 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: January 18, 2013

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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

AT&T UPGRADE AT NEWBURGH MALL
(2012-28)

Scheduling of a Public Hearing for 1/17/2013

----- X

BOARD BUSINESS

Date: January 3, 2013
Time: 7:23 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
THOMAS P. FOGARTY
JOHN A. WARD

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
GERALD CANFIELD

----- X

MICHELLE L. CONERO
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CHAIRMAN EWASUTYN: We have two public hearings slated for the next meeting. We have a restaurant which Joe Profaci mentioned the name, the Italian restaurant which is coming on board.

MR. PROFACI: Il Cena Cola.

MR. COCKS: You will need to do the one Board business item. You have to schedule the one public hearing.

CHAIRMAN EWASUTYN: We never circulated that?

MR. COCKS: We never even got the application in until --

CHAIRMAN EWASUTYN: Do you want to bring that to move on it?

MR. COCKS: The AT&T upgrade at the Newburgh Mall, project number 2012-28. The Planning Board will need to discuss the scheduling of a public hearing for January 17, 2013. The notice of hearing has been sent to The Mid-Hudson Times. I actually got the e-mail today. They'll be printed on the 9th, so that's in time. I sent the mailing list over to the applicant for distribution and they'll all be sent out. All the notices will be in order.

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CHAIRMAN EWASUTYN: Tomorrow we'll be receiving that application along with the individual packages.

I'll move for a motion to set January 17th for the public hearing for the AT&T co-location at the Newburgh Mall.

Correct, Bryant?

MR. COCKS: Yes.

MR. WARD: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by John Ward. I have a second by Tom Fogarty. I'll ask for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

Happy new year.

I'll move for a motion to close the Planning Board meeting -- there was something

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somebody wanted to bring up but I can't remember
-- of January 3, 2013.

MR. GALLI: So moved.

MR. PROFACI: Second

CHAIRMAN EWASUTYN: I have a motion by
Frank Galli and a second by Joe Profaci. I'll
ask for a roll call vote starting with Frank
Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

(Time noted: 7:24 p.m.)

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C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: January 18, 2013