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

----- X
In the Matter of

LANDS OF CORLISS
(2007-47)
777 Orchard Drive
Section 1; Block 1; Lot 27
AR Zone

----- X

PUBLIC HEARING
TWO-LOT SUBDIVISION

Date: February 21, 2008
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
- ALSO PRESENT: DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- KAREN ARENT
- JOHN R. SZAROWSKI
- GERALD CANFIELD
- KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: LAWRENCE MARSHALL

----- X

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

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CHAIRMAN EWASUTYN: Good evening, ladies and gentlemen. I'd like to welcome you to the Town of Newburgh Planning Board meeting of February 21st. At this time we'll call the meeting to order with a roll call vote.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Myself present.

The Planning Board has experts that provide input and advice to the Planning Board in reaching various SEQRA determinations. I ask that they introduce themselves at this time.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Court Stenographer.

MR. SZAROWSKI: John Szarowski, Planning Board Engineer.

MR. COCKS: Bryant Cocks, Planning Consultant with Garling Associates.

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

MR. WERSTED: Ken Wersted, Creighton,

LANDS OF CORLISS

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Manning Engineering, Traffic Consultant.

MR. CANFIELD: Jerry Canfield, Fire Inspector, Town of Newburgh.

CHAIRMAN EWASUTYN: Thank you. At this time I'll turn the meeting over to Frank Galli.

MR. GALLI: Everybody please stand. (Pledge of Allegiance.)

MR. GALLI: Thank you. Please turn off all cell phones, pagers and any other devices that will make noise.

CHAIRMAN EWASUTYN: The first item of business we have this evening is the lands of Corliss. It's a public hearing for a two-lot subdivision located on Orchard Drive in an AR Zone. It's being represented by Lawrence Marshall.

I'll ask Mr. Mennerich to read the notice of hearing.

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a public hearing pursuant to Section 276 of the Town Law and to the Municipal Code of the Town of

LANDS OF CORLISS

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Newburgh, Chapter 185-57 Section K, on the application of lands of Corliss for a two-lot subdivision on premises 777 Orchard Drive in the Town of Newburgh, designated on Town tax map as Section 1; Block 1; Lot 27. Said hearing will be held on the 21st day of February at the Town Hall Meeting Room, 1496 Route 300, Newburgh, New York at 7 p.m. at which time all interested persons will be given an opportunity to be heard. By order of the Town of Newburgh Planning Board. John P. Ewasutyn, Chairman, Planning Board Town of Newburgh. Dated February 6, 2008."

CHAIRMAN EWASUTYN: Dina Haines,
Planning Board Secretary.

MS. HAINES: The notice of hearing was published in The Sentinel on February 15th and in The Mid-Hudson Times on February 13th. The applicant's representative sent out eight registered letters, six were returned. The publications and the mailings are all in order.

CHAIRMAN EWASUTYN: Thank you.
Lawrence.

MR. MARSHALL: The total subdivision is a two-lot subdivision located on the easterly

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side of Orchard Drive. What we have proposed is the existing approximately 5-acre parcel will be subdivided into a 1.8-acre parcel with the remaining lands remaining with the existing house being a 3.3-acre parcel.

What we have proposed is an individual driveway for the new house, not a common driveway.

The new house will be served by an individual well and septic system.

CHAIRMAN EWASUTYN: Thank you.

Mike, before we open up the meeting to the public, would you please.

MR. DONNELLY: Sure. The purpose of the public hearing on the subdivision is to hear comment from the public regarding the proposal. Before the Planning Board takes action and after its consultants have reported, it wishes to take any concerns that you wish to bring to the Board's attention into that equation. When the public is called upon to speak, if you wish to speak we'd ask you to raise your hand and when you're recognized please step forward, tell us your name, spell it if you would for our

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Stenographer so we get it down correctly, and address your comments to the Board. If a question requires an answer, the Chairman will ask either the applicant's representative or one of the Town's consultants to give that answer.

CHAIRMAN EWASUTYN: Thank you.

At this time we'll open up the meeting to the public.

(No response.)

CHAIRMAN EWASUTYN: If there's no one here at this time that would like to speak, we'll turn to our consultants for their final comments. John?

MR. SZAROWSKI: A couple just small comments. One, the separation distance from the well on lot 5-B is mislabeled.

We ask that the standard note requiring the culvert to be placed at the direction of the highway superintendent should be added to the plans.

MR. MARSHALL: Sure.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: There were two outstanding

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issues. One was regarding lot numbering. The applicant renumbered the lots to be 1 and 2 of the Corliss subdivision instead of 5-A and 5-B which would have been from the previous subdivision. He completed that.

He also added a note on the plan stating that stonewalls will be preserved on site except for where the driveway cut is necessary, and that will also be a condition of approval.

CHAIRMAN EWASUTYN: Thank you. We did receive a letter from Darrell Benedict, the highway superintendent, dated February 21, 2008.

Cliff Browne, do you want to read this into the --

MR. BROWNE: "Mr. John Ewasutyn, Planning Board Chairman, from Darrell Benedict, Highway Superintendent. Date February 21, 2008. Reference Corliss subdivision. I have inspected the Corliss subdivision and only have a few comments. One, a catch basin should be installed between both driveways with an opening to collect the water between both driveways so that the two pipes can be connected to prevent crushing. Two, a twelve-inch pipe is fine but will be at least

1
2 thirty inches in length -- thirty feet -- I'm
3 sorry -- in length. The developer still needs to
4 get a driveway permit through this department per
5 Town Highway Code. If you have any further
6 questions, feel free to contact me at the above
7 number. Thank you."
8 CHAIRMAN EWASUTYN: Would you like a
9 copy of that, Lawrence?
10 MR. MARSHALL: Yes. If you have one.
11 CHAIRMAN EWASUTYN: Okay. You can have
12 that.
13 Is there anyone here this evening who
14 has come in late that has any comments regarding
15 the Corliss subdivision on Orchard Drive?
16 (No response.)
17 CHAIRMAN EWASUTYN: Then I'll turn to
18 the Board Members. Frank Galli?
19 MR. GALLI: Nothing.
20 MR. BROWNE: No questions.
21 MR. MENNERICH: No questions.
22 CHAIRMAN EWASUTYN: Mike, do you want
23 to add anything at this time before I move to
24 close the public hearing?
25 MR. DONNELLY: No.

LANDS OF CORLISS

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CHAIRMAN EWASUTYN: I'll make a motion now to close the public hearing for the two-lot subdivision for the lands of Corliss.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Ken Mennerich. Any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Mike, can you give us conditions for approval in the final resolution?

MR. DONNELLY: There are only a few. We'll need a sign-off letter from McGoey, Hauser & Edsall on the correction to the plans that John noted earlier. Secondly, we'll recite that this approval is conditioned upon the highway superintendent issuing the driveway permit as set

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2 forth in his letter. We'll carry as a condition
3 what already appears as a map note, and that is
4 the requirement that the stonewalls on the site
5 may only be disturbed for the purpose of opening
6 driveways, and the driveways cannot be more than
7 twenty feet in width when that's done. The last
8 thing is there will be a requirement of the
9 payment of parkland fees for the new lot created
10 in the subdivision.

11 CHAIRMAN EWASUTYN: Thank you.
12 Having heard conditions of approval for
13 the two-lot subdivision for the lands of Corliss
14 from our Attorney Mike Donnelly, I'll move for
15 that motion.

16 MR. GALLI: So moved.

17 MR. BROWNE: Second.

18 CHAIRMAN EWASUTYN: I have a motion by
19 Frank Galli. I have a second by Cliff Browne.
20 Any discussion of the motion?

21 (No response.)

22 CHAIRMAN EWASUTYN: I'll move for a
23 roll call vote starting with Frank Galli.

24 MR. GALLI: Aye.

25 MR. BROWNE: Aye.

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MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Thank you, Lawrence.

MR. MARSHALL: Thank you very much.

(Time noted: 7:09 p.m.)

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: February 27, 2008

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

----- X
In the Matter of

THE POLO CLUB
(2006-09)
Route 300
Section 39; Block 1; Lot 78.1
R-3 Zone

----- X

SITE PLAN
F.E.I.S.

Date: February 21, 2008
Time: 7:10 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
- ALSO PRESENT: DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- KAREN ARENT
- JOHN R. SZAROWSKI
- GERALD CANFIELD
- KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

----- X

MICHELLE L. CONERO
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THE POLO CLUB

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CHAIRMAN EWASUTYN: The next item of business this evening is The Polo Club. It's a site plan reviewing the Final Environmental Impact Statement. It's located on Route 300 in an R-3 Zone. It's being represented by Ross Winglovitz.

MR. WINGLOVITZ: Good evening. Ross Winglovitz from Engineering Properties here on behalf of Meadow Creek Development for The Polo Club F.E.I.S.

We did receive all your consultants' comments. I see we have some work to do. There was a significant redesign from our previous submission, so it doesn't surprise me that there are a number of, specifically Karen's comments that relate to landscaping and layout that we will work on with her as usual.

I did have a couple questions regarding a couple of the comments and look forward to hearing any input the Board has or the consultants have.

CHAIRMAN EWASUTYN: Okay. Let's start with stormwater management. John.

MR. SZAROWSKI: One of the things that

THE POLO CLUB

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Mr. Hines noted was that the pond elevation seems to take into account the storage at the bottom of the pond as opposed to the lowest orifice, and the ponds are most likely undersized and will need to be revisited. That's the biggest issue with the stormwater.

Do you want me to continue?

CHAIRMAN EWASUTYN: Please.

MR. SZAROWSKI: You have his comments. The other thing he's asking for is that the wetland determination from the Army Corp of Engineers be incorporated into the F.E.I.S. Let's see. The rest of the comments I think you have.

CHAIRMAN EWASUTYN: Okay. Any comments from the Board Members so far in reference to what John has presented?

MR. GALLI: Is there any determination on the streets and what's going to happen there?

MR. WINGLOVITZ: Yeah. A little confusion. I think we wrote parts of the F.E.I.S. before we finished the plan. The roads, and I think as Bryant picked up, are thirty feet wide where we're doing the parking, and then they

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2 narrow down to twenty-four feet where there is no
3 parking.
4 MR. GALLI: Thirty with parking?
5 MR. WINGLOVITZ: Thirty with parking,
6 twenty-four with no parking.
7 MR. GALLI: That will be in the --
8 MR. WINGLOVITZ: We need to correct our
9 text in the F.E.I.S. Yup.
10 MR. GALLI: Let me see. Response
11 number 4 was a response to comment 33 that
12 identified the Town police have enforcement --
13 can enforce traffic and all that?
14 MR. WINGLOVITZ: We don't have a
15 problem with that.
16 MR. GALLI: Okay.
17 MR. WINGLOVITZ: Regarding stormwater,
18 we think we have done that. It may be a little
19 bit confusing in our document. I'll be glad to
20 either prove that to them or correct it.
21 CHAIRMAN EWASUTYN: Any additional
22 comments, Frank?
23 MR. GALLI: None additional, John.
24 CHAIRMAN EWASUTYN: Cliff Browne?
25 MR. BROWNE: No. I just -- I don't

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know. No.

CHAIRMAN EWASUTYN: Okay. Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: All right. I think an additional comment from Pat Hines was that we will need the response of Dr. Shuster in reference to the concerns with biodiversity.

Bryant Cocks, Planning Consultant.

MR. COCKS: We discussed at great length the issue of parking on site. In the redesign of the project you guys added in a number of on-street parking spaces and widened the road to what Don Greene asked for the width to be so that the fire trucks could get around.

You also added in some extra spaces in between the buildings and at the end of driveways. It looks like where the single driveways come in the side-loaded garages and there's the single spot there, we were questioning whether there was going to be enough room for a car to pull out of the driveway space without running into the car that would be parked on the extra space there. We discussed that with

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the Board and I think we just want to see either some turning radius shown on the plans to make sure they can fit.

MR. WINGLOVITZ: We can do that. Sure.

MR. COCKS: Okay. And also just the number of parking spots. You guys indicated that it was I guess 2.9 -- for each unit there's going to be 2.9, or maybe 2.8 parking spots and you eluded to Brighton Green only having I think 2.1 or 2.2. We think that that's going to be enough parking but we just don't know if you're going to have to take out certain parking spaces.

MR. WINGLOVITZ: For that --

MR. COCKS: For that purpose. That just needs to be clarified --

MR. WINGLOVITZ: Not a problem.

MR. COCKS: -- and adjusted if necessary.

Another issue was the construction of the recreational areas and the clubhouse. We're going to need to set up a specific number of units that can be built out before that has to be constructed. I know the Board has previously used a third of the units or possibly 75 percent

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of the first phase. I don't know if they would like to discuss how many units before they want to see the clubhouse built.

CHAIRMAN EWASUTYN: Have you given any consideration to that?

MR. WINGLOVITZ: I have not. It is going to be obviously constructed very early on because it is the central focal point of the new project. Now it's right at the front so it does have to happen early on. If you said something like a third of the units, I don't think we would have a problem with that.

CHAIRMAN EWASUTYN: Mike, do you have any recommendations to the Board?

MR. DONNELLY: No. We've always required some percentage of the units and we've tailored that to the individual circumstances of the proposal. I don't have an opinion as to what the percentage is but clearly you want it to be available, you know, in the early stages if there's some body of people living there to make it economically worth doing.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Are you doing one regime

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or two regimes?

MR. WINGLOVITZ: I think the Town of Newburgh only allows us to do one any more. Brighton Green they tried to do two and they weren't allowed to do two. The assessor pretty much said he wants one regime, period. There's two construction phases but there will be one homeowners association, one condominium association.

MR. BROWNE: Okay. That being the case, I would suggest we go with a third or less as far as percentage goes of the units. If you have a better -- a smaller number based on what you're looking for for build out and let's say aesthetic purposes. If it's 25 percent I think that number would be good. I think it should be less than 30 percent.

CHAIRMAN EWASUTYN: Explain regimes to me and why that is decisive in your making the recommendation.

MR. BROWNE: Consider Meadow Winds. Meadow Winds had three condo regimes. Each regime is in itself a self-entity. Each one had governing ability within it's own ability there.

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2 Each regime must run it's own business and each
3 regime then must in fact hold meetings of the
4 members of the regime which are the unit owners.
5 So in order for a regime to have a meeting they
6 have to have a meeting place, which from my mind
7 drives a necessity to have a clubhouse which will
8 also be the meeting room for the condo. We had a
9 big problem up there because we didn't have
10 anything forever. We had to rent space out in
11 town. That's one of my reasons for looking at
12 that particular situation and realizing that
13 State law says once the unit is 75 percent sold
14 out then the condo people then must form their
15 own regime and take on the management of that
16 condo. So that's what kind of drives that whole
17 situation.

18 MR. WINGLOVITZ: And it's stated
19 75 percent?

20 MR. BROWNE: 75 percent is the State
21 mandate, yeah. So that's where I'm coming from
22 as far as why the different regimes. Also, if
23 you have two regimes they're actually independent
24 from each other.

25 The other thing that governs over that

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2 is the association, the homeowners association
3 which then involves all the properties. That is
4 not part of the individual regime but is common
5 to the whole operation, the roadways, the
6 clubhouse, the recreation facility, those kinds
7 of things. That all becomes part of the
8 association.

9 CHAIRMAN EWASUTYN: Frank, what number
10 of units do you think would --

11 MR. GALLI: Were you going to use this
12 as a sales office in the beginning? I notice
13 it's right up front.

14 MR. WINGLOVITZ: It's likely we're
15 going to occupy it very early. That's why I said
16 I wasn't afraid of 30 percent of the units.

17 MR. GALLI: If it's going to be
18 occupied pretty early I'm sure they want to get
19 it up pretty early. Lower than 30 would be fine.
20 I thought last time you were here you said it's
21 up front.

22 MR. WINGLOVITZ: Last time we were at
23 phase II and I think we had it before a CO was
24 issued in phase II or something.

25 MR. GALLI: Right.

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MR. WINGLOVITZ: So before that probably 40 units or more that were going to be occupied before it got -- it was available because it was going to be in the second phase. Now it's in part of the first phase, so --

MR. GALLI: 25 percent, that's fine. I don't have a problem with that.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I guess as far as the clubhouse itself, you know, I feel they can put it up as early as they want. The other amenities that go along with it, like the swimming pool and the tot lots and some of that, to me as long as they're in when it's a third, that would be fine.

CHAIRMAN EWASUTYN: So the question really before us right now is how many units do we want to see in place to have this clubhouse also built out. We're agreeing we want to see 25 percent.

MR. GALLI: Just the clubhouse itself, not the pool and stuff like that.

CHAIRMAN EWASUTYN: That would be 25 percent, Mike, with certificate of occupancies being issued.

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MR. DONNELLY: We'll do the arithmetic later in case the unit count changes. 25 percent for the clubhouse and one-third for the remaining recreational facilities. Is that what I'm hearing?

CHAIRMAN EWASUTYN: Correct.

MR. BROWNE: Are all recreation facilities around the clubhouse, not scattered around the site?

MR. WINGLOVITZ: They're all located around the clubhouse, the pool, tot lot and an all purpose lot.

CHAIRMAN EWASUTYN: Does that answer your question, Bryant?

MR. COCKS: That's fine.

Another issue we had was regarding the garbage containers and where they're going to be. You indicated that now there isn't going to be enough room on the street. I don't know if the Planning Board felt that was appropriate considering that the width of the street was an issue regarding fire trucks. I know you put in the D.E.I.S. that there was going to be enough room in the garages to store the containers, and

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also there would be I guess a provision in the homeowners bylaws that it would only be allowed out for twenty-four hours.

MR. WINGLOVITZ: Yup.

MR. COCKS: I know on the previous plan you had little squares up at the corner of the driveway for placing the containers. We discussed it at the work session. I don't know if that's going to be necessary but I think everyone wanted to --

MR. WINGLOVITZ: This was a good place to leave your garbage can. We don't want to do that; right?

MR. GALLI: Right.

MR. COCKS: I think the Planning Board discussed not wanting the squares but not having them on the street. Is that correct?

CHAIRMAN EWASUTYN: Correct. I think what we realized is that -- Cliff Browne, why don't you again speak how you think this should be managed internally, what we're looking to prevent as far as not being shown in the design feature which Karen commented on in her review.

Cliff.

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MR. BROWNE: Again, I think last time it went back and forth about centralized versus -- I mean I've seen the centralized up there. I know what kind of problems they are. On the other hand we also know people like to leave things out and what not. From my perspective we can plan and put it in here but it needs to somehow have some validity in the prospectus, in the bylaws that hopefully the condo folks will manage it.

MR. WINGLOVITZ: We can include that language as a Finding and then we'll put in that it be incorporated into the --

MR. DONNELLY: One of the conditions of the resolution is that the bylaws be approved by the town attorney in advance of the signing of the plan.

MR. WINGLOVITZ: We'll have that condition. Sure.

MR. COCKS: Okay. We also discussed have you been in contact with the Town Board about any agreement for the roadway improvements?

MR. WINGLOVITZ: We have not yet, no.

MR. COCKS: Okay.

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MR. WINGLOVITZ: We plan on having that conversation. I think Phil did start that conversation regarding the traffic improvements.

MR. COCKS: Okay. That's going to have to be worked out.

MR. WINGLOVITZ: It hasn't been in front of the Town Board yet. We have started that ball rolling.

CHAIRMAN EWASUTYN: We'll discuss that further this evening when Ken Wersted is before us.

MR. COCKS: Okay. And just one more thing. We also discussed with Jerry here about the road width. Apparently New York State as of January 1st has adopted international building code guidelines. They have some provisions in there now specific to residential developments and every type of development regarding road width. We're just going to have to look at that and see what the new standards are. They might even need to be adjusted again. We're really not sure. Me, Jerry and Ken are going to sit down and kind of hash this out.

CHAIRMAN EWASUTYN: Mike, do you want

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to elaborate on that?

MR. DONNELLY: I wasn't familiar with it but apparently there's a new version of the code that just came in in January. As Jerry seems to be reading it, and he's going to seek clarification from the Codes Division, it dictates road widths by height and type of construction. His question to us is would they take precedence over the Town's roadway regulations. My belief is they would. If that is true the Town would need to revise its roadway specifications to bring them into conformance with the Code. We're not yet convinced until we get that ruling exactly how they are implicated. Since we just heard about it we want you to know about it. You can look into it independently, you can wait for us to respond, but it may have implications for your project.

MR. WINGLOVITZ: Okay.

MR. CANFIELD: One thing to elaborate on that. Ross, I know you're familiar with the fire code international code. In the 2006 version there's a section that's specific to New York State which allows appendix D to be

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2 enforceable. I know you're familiar with the
3 codes. Typically the appendixes are references
4 but this particular section is specific, and it
5 is enforceable. It increases road widths which
6 may impact what you have. So that's what we're
7 looking at.
8 CHAIRMAN EWASUTYN: Okay.
9 MR. WINGLOVITZ: Yup. We'll check it
10 out.
11 MR. COCKS: That was the extent of my
12 comments.
13 CHAIRMAN EWASUTYN: Karen Arent,
14 Landscape Architect.
15 MS. ARENT: Some of the responses to
16 previous comments in the F.E.I.S. need to be
17 revised to be in accordance with other projects
18 that have been approved in the Town.
19 MR. WINGLOVITZ: Those are probably the
20 ones I want to discuss. Right?
21 MS. ARENT: The tree preservation
22 notes, they need to be on the grading and erosion
23 control plan. You can put them on the cover
24 sheet.
25 MR. WINGLOVITZ: Our text was

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incorrect. We did put them on the grading and erosion control but it was only on sheet 106. It needs to be copied on 105 and 104.

MS. ARENT: If you would put them on all of them, that's important.

MR. WINGLOVITZ: Not a problem.

MS. ARENT: Just reword it so that it doesn't say healthy trees but any trees that -- no trees can be removed except those that are a danger to public health, safety or welfare. There's always a question about healthy, whether a tree is healthy or not.

The tree replacement note, --

MR. WINGLOVITZ: That's the one I want to talk about.

MS. ARENT: -- that's actually in the buffer ordinance. The note says caliber instead of basal area. You can put the caliber in if you prefer but we find that if we don't have something strong on the plan that warns the contractors that they have to replace trees they just go in and cut them down and it doesn't matter. It doesn't make sense to go through the whole exercise of trying to save trees if there's

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nothing in there to make them replace it if they do go through and cut them down.

MR. WINGLOVITZ: I guess I agree when it comes to that area of trees being used in the plan as a buffer area or specifically in a void due to some other environmental concerns. Like we've shown orange fencing around the back of these units where there's trees, to save those because these are important buffer areas here, along here. I absolutely agree with that note when we use it in the SEQRA process because we're saying these trees are going to be there and that's what we're saying minimizes the environmental impact.

I guess my concern is if we put it everywhere it may prohibit really the future people here from cutting down trees and creating an impact to them that they're not aware of. They may need to cut down trees over here because it's shading the house and creating a maintenance problem. I don't want to-- where it's not a critical area that has been identified in the SEQRA process of us having to preserve those trees, I don't want to have some future owners

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2 subject to a note where there's no real benefit
3 tied to it.
4 MR. DONNELLY: We've handled this
5 differently for different types of plantings. We
6 have often said in a residential subdivision that
7 we don't want the developer to take shortcuts in
8 the construction phase because it's easier for
9 him and then sell lots that are completely
10 denuded when they earlier had trees. In that type
11 of restriction you've limited it to the
12 construction phase only, and that would afford
13 the lot owner in the future to landscape or not
14 as he saw fit. In those areas that were
15 essential to buffering protection or public view
16 sheds, you've required a permanent restriction
17 either by recorded declaration or, in a limited
18 number of cases, by conservation easement running
19 to the Town that would authorize the enforcement
20 on behalf of the public at large. It may mean
21 that we have a mix of those things here, a
22 permanent restriction for the buffer areas and
23 the construction phase limitation for the other
24 areas that Ross mentioned. However, during the
25 construction phase I think the point of Karen's

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2 note is that if the condition is violated, that
3 the replacement has to have a measurable penalty,
4 replacement with equivalent basal area or caliber
5 size, and we could do that hybrid.
6 MS. ARENT: Well on this particular
7 project we weren't asking for a conservation
8 easement or anything, we were just asking for the
9 areas to be --
10 MR. DONNELLY: The construction phase.
11 MS. ARENT: -- preserved during the
12 construction phase. I didn't think this note
13 carried it through.
14 MR. WINGLOVITZ: You're talking about
15 as a construction phase only. I don't have a
16 problem with the way Mike presented it to me. I
17 was under the impression we were talking about --
18 MS. ARENT: Not in perpetuity.
19 CHAIRMAN EWASUTYN: Cliff Browne, I
20 know you wanted to add something to this.
21 MR. BROWNE: Again, a condo is
22 different than a single-family situation. In a
23 condo situation only the board of managers has
24 the legal right to do anything on that property.
25 Nobody else has any say whatsoever. The board of

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2 managers has sole authority and nobody else has
3 anything. They vote them into it, they're it.
4 They are king, okay. So once they take charge
5 then -- or queen. Once they take charge they
6 have full control over that entire property. No
7 single family -- no single unit owner has any
8 control whatsoever. That's a huge difference. So
9 what you just went through, through the
10 construction phase is fine. After that then it's
11 only the board of managers. Up until the condo
12 votes in their own people the developer is in
13 fact the board of managers.

14 CHAIRMAN EWASUTYN: Right.

15 MR. BROWNE: So you have that big
16 difference between this type of situation and a
17 single-family situation.

18 CHAIRMAN EWASUTYN: Thank you.

19 Frank, do you have any comments as far
20 as the interpretation that Mike had given us.

21 MR. GALLI: No. That's perfectly
22 understandable.

23 CHAIRMAN EWASUTYN: Ken?

24 MR. MENNERICH: I guess the only
25 question based on what Cliff just mentioned is

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could the board of managers then down the road go in and say part of that buffer area that was put up basically as a buffer, they could say it could be taken down?

MR. BROWNE: As long as they have the legal right according to -- I used to know the law.

MR. GALLI: It's a buffer area.

MR. DONNELLY: They could unless there was a recorded restriction that prohibited it from the buffer area. Certainly as to the rest of the areas that had no recorded restriction, they could clearly do that. I think they should be allowed to because they may have a better idea of what kind of plantings they want. But we can restrict the buffer area on a permanent basis.

MR. WINGLOVITZ: I don't think -- are there any of those buffers on this plan actually? These are buffers that we've created because of visual impact.

MS. ARENT: According to the buffer regulation, during construction you're supposed to save trees as much as you can and plant new trees. There's nothing in the regulation I don't

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2 believe, and I will double check, that says it
3 has to remain in perpetuity. I feel confident we
4 wouldn't have to worry about that because these
5 people aren't going to want to --- they're thirty
6 or forty feet adjacent Jeanne Drive. I don't
7 think it's necessary.

8 MR. DONNELLY: Your recommendation is
9 construction phase limitations only for all
10 areas?

11 MS. ARENT: Yeah. I would -- I do
12 recommend that.

13 CHAIRMAN EWASUTYN: Do you agree, Ken?

14 MR. MENNERICH: I agree.

15 CHAIRMAN EWASUTYN: Then let's move
16 forward.

17 MS. ARENT: Dr. Shuster in his report
18 said there was an oak four feet in diameter on
19 the east side of the site. I didn't see it.

20 MR. WINGLOVITZ: We'll look for it.
21 Forty inches, we should be able to find it.

22 MS. ARENT: I was surprised that I
23 missed it so I went back out and looked for it
24 but I didn't see it.

25 MR. DONNELLY: Maybe he meant forty

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inches high.

MS. ARENT: If you could locate that. Also, in the meantime while I was reviewing that I noticed along the stonewall on that property line there are some nice oaks. The grading for the swale is about forty feet wide. If you could tighten up that grading and preserve fifteen to twenty feet from the property line to try to save those trees. Not in the stormwater management area but behind the first and second building. If you could tighten up that swale grading to give us like fifteen, twenty feet of preserved area between the property line and the grading, that would be great. That would save some --

MR. WINGLOVITZ: We'll look at that.

MS. ARENT: -- oaks. It looks like it's possible.

Then the plant warrantee and quality notes are very important.

MR. WINGLOVITZ: It's really a warrantee to us or to the builder that you're talking about, not a warrantee back to the Town.

MS. ARENT: It has to be on the plan and it is to you but it's enforceable later when

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-- like when I go out and inspect --

MR. WINGLOVITZ: More the quality I guess.

MS. ARENT: The quality is very important. You'd be surprised what you see out there if you don't have that on. As well as the warrantee. You have to define what the warrantee is. You have to say like a plant is -- if a tree loses its main leader or more than 25 percent of its branches it needs to be replaced, otherwise if it has one live branch on the bottom who is going to say -- it's technically still alive so the landscape contractor will not want to replace it and the Town doesn't go into all that detail.

MR. WINGLOVITZ: Not a problem.

MS. ARENT: It helps you, too.

Then I have a bunch of site planning and landscape planning comments. Unless there's any that you have a question on, I think they're self-explanatory.

MR. WINGLOVITZ: We discussed the one I had a comment on. Oh, I do have one comment. Is the width of the walkways to the units -- I mean I like to make the width of the walkways from the

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2 sidewalk to the units smaller because it's more
3 personal and it kind of creates a hierarchy.
4 Where we have five-foot walks here, we have
5 three-foot walks into the building.
6 MS. ARENT: It is tight but if you
7 feel --
8 MR. WINGLOVITZ: I think it keeps it
9 more private and less public.
10 MS. ARENT: Then that would be fine.
11 CHAIRMAN EWASUTYN: Comments from Board
12 Members on Karen's review. Frank Galli?
13 MR. GALLI: No additional.
14 MR. BROWNE: Nothing.
15 MR. MENNERICH: I was just wondering if
16 you could discuss a little bit about the mailbox
17 locations because that was kind of a site plan
18 thing that we had quite a bit of discussion on in
19 work session.
20 MS. ARENT: I was thinking that if you
21 could locate your mailbox --
22 MR. WINGLOVITZ: Closer.
23 MS. ARENT: Yeah. Maybe make a little
24 pull off by the clubhouse drive, and then perhaps
25 design some kind of shelter over the top of it to

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2 make it look attractive and to keep people out of
3 the rain, especially the mailman. Maybe tie it
4 into the whole architecture of the clubhouse
5 area.

6 MR. WINGLOVITZ: We have one here and
7 one at the rear of the site.

8 MS. ARENT: If you can make it like a
9 special spot rather than those ugly metal boxes.

10 MR. WINGLOVITZ: With some chairs and
11 more of a gathering area?

12 MS. ARENT: It doesn't need chairs, it
13 just needs to look nice. Maybe a little
14 structure over the top of it and some planting
15 around it. Just make sure it's located in an
16 easy to get to spot. I think people pull in and
17 want to pull right out. I thought if you just
18 moved it over.

19 MR. WINGLOVITZ: I'll have some ideas
20 for you.

21 MS. ARENT: That would be good. That's
22 it.

23 CHAIRMAN EWASUTYN: Any other site --

24 MR. MENNERICH: No.

25 CHAIRMAN EWASUTYN: At this point we

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Ken Wersted, do you want to take the floor first?

MR. WERSTED: Sure. At work session we started to discuss this a little bit, primarily the issue being the fair share contribution. How much are the improvements? What needs to be improved out there? Will the project be able to fund all the improvements or, you know, partial? Also, how is that fair share divided between this project and say Driscoll? Is it an even fifty-fifty? Is it based on the number of units each of them are producing based on the traffic? How does that get divvied up. And then also if

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2 it's not funding all of them, all of the
3 improvements, how do we accommodate the residents
4 of the projects and also the surrounding area in
5 the short term? If, you know, say 75 percent of
6 the improvements are being funded, how do we get
7 to the last portion? So I think that kind of
8 goes along with your response in terms of talking
9 about the Town and the Planning Board, and those
10 are the discussions that we need to have. I
11 don't know that we'll be able to answer all those
12 tonight.

13 Certainly the cost estimate is
14 something that needs to be looked at. I know in
15 the Driscoll project a concept has been shown for
16 the widening of 300 at the intersection of
17 Gardnertown Road. So that's, I think, the issue
18 that was brought up at the work session, and that
19 will need to be discussed further.

20 CHAIRMAN EWASUTYN: You brought it up
21 in your response comment that we would discuss it
22 so that's why we're discussing it this evening
23 with the Board. Would you like to add anything
24 to that?

25 MR. GREALY: Phillip Grealy, John

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2 Collins Engineers. We had prepared a concept
3 plan as part of the Driscoll subdivision. I
4 think in terms of the fair share contributions
5 here it may turn out that these two projects are
6 the only projects that are taking care of the
7 cost here. It is a State highway so one of the
8 things that we started discussions with the State
9 DOT is this is an improvement of the intersection
10 that over time would be required. These projects
11 are the ones that kind of push it, you know,
12 sooner rather than later. So we have had some
13 preliminary discussions with the Department of
14 Transportation to see if there was anything "on
15 the books" or anything that could be kind of
16 pushed ahead by these projects. So that's
17 another item that will come into play.

18 I think as we finalize the concept that
19 we developed we'll get the hard cost numbers for
20 the intersection improvements because it involves
21 the turn lanes, modifications to the signals.
22 Similar to some other projects in Town, I guess
23 there would be an agreement prepared and, you
24 know, we have to go to the Town Board for that
25 step. We have kind of started the initial stages

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and I think we can get the cost estimates together and, you know, advance that to the next level.

CHAIRMAN EWASUTYN: Mike, how do you see us writing something like this into a Findings Statement?

MR. DONNELLY: Well, I think what we're going to require is that there's a satisfactory fair share agreement in place to the Town Board. That may or may not be a full funding. In terms of the Findings and the resolution, the agreement has to be there.

Two things. One is you do need to get the Town Board involved because maybe there's some sharing of the shortfall, if there is one, between the DOT and the Town.

Also, earlier this evening we had a representative of the Orange County Planning Department here and she announced to the Board that the County is about to commence a regional infrastructure, largely traffic but other issues, as well as a study of the eastern part of the county from Montgomery down through Cornwall, and traffic will be an important part of that study.

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2 It will be modeled somewhat like the southeast
3 regional task force and will have hopefully the
4 participation of all of the towns, the DOT, the
5 County and the Port Authority as well as the
6 State. Maybe in that mix, in the prioritization
7 of intersections that need improvement, some
8 additional funding may be able to come forward
9 for some of these difficult intersections that
10 have direct implications for how the main
11 arteries work. So that may be something that may
12 be, because it's a two-year project, a little too
13 late to give you the guarantee but it's the kind
14 of forum where some of these issues can be
15 brought forward.

16 MR. GREALY: Thank you.

17 CHAIRMAN EWASUTYN: Overall to date the
18 information that they supplied with the traffic
19 study, do you find them to be complete?

20 MR. WERSTED: Yeah. We're settled with
21 that.

22 CHAIRMAN EWASUTYN: Additional comments
23 as far as improvements for traffic. Frank Galli?

24 MR. GALLI: No additional.

25 CHAIRMAN EWASUTYN: Cliff Browne?

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MR. BROWNE: Nothing more on traffic.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The only other item we discussed relative to traffic was the intersection of 300 and Route 52. Are you going to consider that?

MR. GREALY: That's also part of the discussions that we started with the Department of Transportation because that intersection had already been on, you know, their tip. So that falls in a different category. The answer is that's -- those were the two intersections that had been identified and will be addressed. It may turn out we have fair share contribution at both locations. Maybe some of the monies go to this intersection to advance this. So there's some things we have to work out Ideally to get both projects advanced to help the traffic situation in that corridor.

MR. MENNERICH: Thanks.

CHAIRMAN EWASUTYN: At this point the Board has discussed the project and feels at this point that it is incomplete and not ready to be accepted.

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Bryant, would anyone be preparing a complete summary of items that need to be addressed or will we work by the review sheets from each consultant?

MR. COCKS: I think historically we've used the review sheets from the consultants. If you want me to prepare one, that would be fine.

CHAIRMAN EWASUTYN: Frank, how would you like for it to be managed?

MR. GALLI: One big sheet.

MR. BROWNE: That's appropriate.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: I think they've got all the information on the sheets that are out there already so why do more paperwork, but --

MR. GALLI: Okay.

CHAIRMAN EWASUTYN: Then we'll do that. You'll work from the review comments that you received from our consultants to address the F.E.I.S.

MR. DONNELLY: One last thing if I could. Could you begin a first stab at the Findings Statement, even if it's just the hierarchy and the recitation, so that as soon as

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this is completed we can begin work on that document? It really helps to literally start to move things along and address them as you go down the list. If you could do that it would be helpful.

MR. WINGLOVITZ: Absolutely.

CHAIRMAN EWASUTYN: There's always that ten-day time period anyway after that.

MR. DONNELLY: You can't act until ten days but it's going to be hard to get it done in ten days anyway. The sooner we get started on it the better.

CHAIRMAN EWASUTYN: They had said down in New York those are just guidelines throughout the whole SEQRA process. All right. Thank you.

Any additional comments from anyone?

(No response.)

MR. WINGLOVITZ: Thank you. Have a good evening.

(Time noted: 7:45 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: February 27, 2008

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

----- X
In the Matter of

WOODLAND HEIGHTS SUBDIVISION
(2003-47)

Wenmar Drive between Wilella Place & Woodlawn Ave
Section 73; Block 2; Lots 78.3, 78.4, 78.5, 78.6 & 78.7
R-3 Zone

----- X
SEVENTEEN-LOT SUBDIVISION

Date: February 21, 2008
Time: 7:45 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: JAMES RAAB

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

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CHAIRMAN EWASUTYN: The next item of business we have is the Woodland Heights subdivision. It's a sixteen-lot subdivision located on Wenmar Drive, Wilella Place and Woodland Avenue in an R-3 Zone and it's being represented by Jim Raab.

MR. RAAB: Good evening. As I related in my letter to the Planning Board, we received approval of the drainage district on February 11th in front of the Town Board. The original bond amount that was approved previously by the Board was upheld also at that meeting. So that's basically what I had to do.

We haven't changed any of the drainage that was decided at the work session that the Board asked us to attend with Pat Hines, George Woolsey, the town attorney, the town engineer. It was decided that based on their feelings that there wasn't any sense in us changing it. They weren't going to accept it anyway. We said all right, if you're not going to accept it there's no sense in going through this. We basically went back to the drainage we had before and we got the stuff that was -- the loose ends tied up

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with the Town. That's basically where we're at.

CHAIRMAN EWASUTYN: John, did you and Pat discuss this project?

MR. SZAROWSKI: Yes, we did.

CHAIRMAN EWASUTYN: Do you want to bring us along on that discussion?

MR. SZAROWSKI: Basically with the withdrawal of the storm chambers and going back to the previously approved we found it to be acceptable.

CHAIRMAN EWASUTYN: Bryant Cocks, do you have any comments at this time?

MR. COCKS: No. The site layout didn't change. Everything is the same as when it was approved.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: No comments.

CHAIRMAN EWASUTYN: Ken Wersted?

MR. WERSTED: Nothing.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: I'm just curious. Is it sixteen lots or seventeen lots?

MR. RAAB: Good question.

MR. GALLI: One sheet says sixteen, one

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says seventeen.

MR. RAAB: I'll clarify that.

Seventeen. That's my fault. Dina asked me and I said sixteen off the top of my head.

MR. GALLI: We thought maybe you took one off in good grace.

MR. RAAB: For the length of time it's taken me to get it approved.

MR. DONNELLY: The plan set is the same than that was earlier approved?

MR. RAAB: Yes. It hasn't changed.

MR. DONNELLY: Just so you remember the history here, you granted preliminary approval in October of 2005 then conditional final in December of 2006. When the drainage district issue wasn't resolved and the 360 days was coming to a head, in November the applicant -- 2007 the applicant surrendered the final and went back to preliminary. Now we're really going back to the same final as before. I drafted the resolution, a resolution of approval of final subdivision reissued, and it recites all of the same conditions as before, just updating the history section. I'm not going to go through all of

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2 those conditions because they're unchanged but
3 they're all reciting what's needed. I guess I'll
4 remove the one regarding the drainage district
5 because that's now been accomplished.

6 CHAIRMAN EWASUTYN: Okay. So what
7 we're doing is we're granting final approval to
8 the seventeen-lot subdivision for Woodland
9 Heights with the understanding that the approval
10 that was originally granted on what date?

11 MR. DONNELLY: The final approval was
12 granted --

13 MR. COCKS: December 14, 2006.

14 MR. DONNELLY: Yes. 2006.

15 CHAIRMAN EWASUTYN: September?

16 MR. COCKS: December 14th.

17 CHAIRMAN EWASUTYN: Okay.

18 MR. GALLI: Jim, has there been any
19 work done over there?

20 MR. RAAB: Just the rough grading of
21 the roads and some installation of the -- all the
22 storm water management stuff was put in. Now
23 it's being redone again just to make sure --
24 there has been some grading done in there so we
25 want to make sure -- one of the things is there

1
2 was a rumor going around that the DEC was going
3 from site to site, so I jumped all over my
4 clients about making sure that their stormwater
5 stuff was in place. It was there, it just really
6 needed to be, you know, redone, which I think
7 they were just waiting for the weather to get
8 better.
9 CHAIRMAN EWASUTYN: Any additional
10 comments?
11 MR. GALLI: No.
12 CHAIRMAN EWASUTYN: Cliff Browne?
13 MR. BROWNE: I'm good.
14 CHAIRMAN EWASUTYN: Ken Mennerich?
15 MR. MENNERICH: No questions.
16 CHAIRMAN EWASUTYN: Okay. Then I'll
17 move for a motion that we grant conditional final
18 approval to the seventeen-lot subdivision of
19 Woodland Heights.
20 Anything else we can add to that, Mike?
21 MR. DONNELLY: No. On the same terms
22 as the resolution was approved originally.
23 CHAIRMAN EWASUTYN: Having heard those
24 conditions I'll move for that motion.
25 MR. MENNERICH: So moved.

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CHAIRMAN EWASUTYN: I have a motion by
Ken Mennerich.

MR. BROWNE: Second.

CHAIRMAN EWASUTYN: Second by Cliff
Browne. Any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a
roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

MR. RAAB: Thank you very much.

(Time noted: 7:52 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: February 27, 2008

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

----- X
In the Matter of

NEWBURGH RETAIL DEVELOPERS/PALMERONE FARMS
(2005-33)
Route 300 & Route 17K
Section 97; Block 2; Lot 34
IB Zone

----- X

SITE PLAN
PHASING PLAN

Date: February 21, 2008
Time: 7:52 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
- ALSO PRESENT: DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- KAREN ARENT
- JOHN R. SZAROWSKI
- GERALD CANFIELD
- KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: KEVIN DOWN

----- X

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

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CHAIRMAN EWASUTYN: The next item of business we have this evening is Newburgh Retail Developers, it's Palmerone Farms. It's a site plan, it's a phasing plan located on Route 300 and 17K. It's in an IB Zone and it's being represented by Kevin Down.

MR. DOWN: Good evening. On behalf of Newburgh Retail Developers, L.L.C. my name is Kevin Down. I'm also joined by Kevin Cumberly, a construction manager, and also Phil Greal, our traffic engineer of John Collins Engineering.

I had previously appeared in front of the Planning Board on December 20th and you had approved at that point in time the phasing plan which, for recollection purposes, I put up here again. I also appeared at the working session on January 23rd.

We're here tonight based on a request we've made in dealing with the second means of access. It's kind of a two-parter. 17K -- let me back up a little bit. The main entrance is going to be on Route 300 with a traffic signal. We have our New York State DOT permits. The second means of egress on the original approved

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2 plan was going to be from 17K, a right in, right
3 out. We're now getting bogged down with the
4 Thruway in appraisals, additional survey work
5 that the Thruway is requiring. Believe it or
6 not, I have to do survey work all the way down to
7 the bus station on 17K because that's all of
8 their property. We have taken the initiative to
9 get it done on a more expedited basis because if
10 we go on the timeframes of the New York State
11 Thruway we could be very, very late into 2008.
12 We're trying to move the process along but it's
13 become clear to us that it's probably going to be
14 autumn of 2008 before we get that resolved. We
15 all know as we drive by the site every day
16 Chili's is almost done and they're looking for a
17 CO and to open for business on or about March 13,
18 2008.

19 I had submitted a written request to
20 the Board requiring that 17K access be deleted.
21 As also part of that we wanted to be able to open
22 and CO Chili's and also Verizon and Panera --
23 Panera and Verizon in the rear retail building
24 without the decel lane from 300 being installed,
25 without the traffic signal being completely

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functional. As part of our application I submitted a report by Phil Grealy, and recently I saw the other day the consultant's report from Ken Wersted confirming what we had suggested, that this would be an appropriate request to the Board.

CHAIRMAN EWASUTYN: Phil Grealy, do you want to bring us along on this, the traffic consultant for the project?

MR. GREALY: Phillip Grealy, John Collins Engineers. Just a little background in terms of we've been involved with this site since day one. The original plan that was developed did only have an access to Route 300. In the early stages of the process we met with DOT and they indicated that they would also allow access to Route 17K. We looked at evaluations both ways. As part of that discussion they even went on to say -- originally that was thought as a right-turn entry only because we were close to the traffic signal. What they suggested was well if we move it back a little further to the east, then it could be a right-turn in, right-turn out. The complication there is that this property here

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2 is not owned by the New York State DOT, it's the
3 Thruway Authority that controls it, and they
4 control pretty much up to the corner with 300.
5 So we had proceeded through the process,
6 developed plans as Kevin indicated, had been
7 permitted from the New York State DOT for
8 signalization and of course coordination of the
9 signal with the Route 300 signal at 17K, and also
10 provision of a right-turn lane as well as some
11 widening of the entry road that exists that
12 serves the diner and Hampton Inn.

13 So at this time, you know, the latest
14 submission actually goes back to one of our
15 original analyses that was done of what would
16 happen with just this access. As I said, we had
17 originally evaluated it that way. Our conclusion
18 is that of course with those improvements, the
19 signal, the turn lane, that the entire project
20 could be served and would function adequately
21 without any connection to 17K.

22 In the interim I'll call it of opening
23 Chili's without the signal being in place, of
24 course you would have already the left-turn lane
25 on Route 300. As today any of the unsignalized

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2 intersections along here would be dependent on
3 gaps from the signal. So for Chili's to open,
4 during peak hours it will be similar to some of
5 the other driveways in this stretch, that you'll
6 have to wait for a gap to get out onto Route 300.
7 In terms of operation, it's something that we
8 feel would function and would not be an unsafe
9 situation because we have the turning lanes. So
10 that's what's been presented in our report.

11 As I said, we do have the permits, both
12 the road widening permit and the signal permit
13 from the New York State DOT. That work will
14 commence once the construction season for DOT is
15 opened up again.

16 That's pretty much where we are. I
17 think that's, you know, the request that Kevin
18 described as where we are in the process right
19 now.

20 CHAIRMAN EWASUTYN: Ken Wersted, you
21 had an opportunity to review the studies that
22 John Collins' office had provided. Would you
23 care to speak at this time?

24 MR. WERSTED: Sure. I've reviewed the
25 analyses that Phil Grealy had provided and we

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2 concurred with his conclusions. We didn't find an
3 analysis of kind of the interim condition where
4 only part of the site is opened. We compared the
5 previous analyses and also the latest analyses
6 that were provided and looked to how much
7 traffic, you know, would be reduced with just the
8 Chili's, the Verizon and the Panera Bread open.

9 One of the I guess requests from the
10 applicant is to remove the Route 17K entrance
11 from the site plan. We're recommending that the
12 Planning Board consider allowing that but if the
13 Thruway Authority comes through and does grant
14 that access across, that the applicant will be
15 required to complete that access way. If you
16 approve a site plan that doesn't have that
17 entrance on there and then the Thruway Authority
18 comes back and says yeah, we're going to grant it
19 to you, the applicant will still be required to
20 make a connection, they can't just walk away and
21 say it's not on the site plan anymore so I don't
22 have to finish it. That was our recommendation
23 to the Board.

24 CHAIRMAN EWASUTYN: Comments from Board
25 Members. Frank Galli?

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MR. GALLI: I agree with Ken, I think it should be left on there. I think it should be open as soon as they can.

MR. DOWN: Mr. Chair, if I may just interject.

CHAIRMAN EWASUTYN: Excuse me. I'm speaking to Board Members.

MR. DOWN: I apologize.

MR. GALLI: On that comment that's where I would go, to actually keep it -- to open it as soon as possible and keep it on the plans so it is there with the stipulation that, you know, as soon as they get the okay it has to be open. I agree with that.

CHAIRMAN EWASUTYN: Cliff?

MR. BROWNE: I had two comments -- questions I guess. First, on this particular issue, if you take it off the site plan then why would I as an applicant pursue it? Why would I do that?

MR. WERSTED: There is a benefit.

MR. DONNELLY: I think I can answer that for you. He's told us that the leases with certain of the users require that secondary

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access.

MR. BROWNE: Is that what I'm hearing?

MR. DOWN: It's still an asset that we're going to pursue. It is of minimal cost compared to the overall cost of the project. It's certainly a benefit. I just don't want to get in a catch 22 where I'm required to -- I have to start opening for tenants but I'm not done with the process with New York State Thruway. I can tell you from personal experience I've been to Albany now, it's a very cumbersome, time consuming, bureaucratic process. Again, I'm a layman, I don't deal in that traffic world every day. It seems to us that since I don't know all the requirements it's oh, by the way, you also need to two appraisals, and oh, by the way, you need to do surveys. They're telling us we think you're going to be done by autumn of '08. If that turns into the spring of '09 and I'm trying to open tenants based on the approvals, I can't get the COs.

MR. BROWNE: I don't have a problem with trying to get the things going but I also don't want to be in a situation where it comes

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off where there's no obligation on their part to complete. Even though they intend to, I would like to see something written in somehow so it's going to happen.

CHAIRMAN EWASUTYN: Mike?

MR. DONNELLY: We can put in that in the event that the Thruway Authority authorizes them, and I don't think the applicant has a problem with this, they'll return. Recognizing I've had a number of discussions with the Thruway Authority personnel, Mr. Maters, and I have yet another letter he wrote today to Kevin that he copied to us, and we'll turn to that a little later, that they're going to have a sealed bidding process for the sale of this land. It may be that -- it doesn't sound likely but it's possible that somebody else is the successful bidder and not this applicant, in which case there's not going to be a secondary -- an ability to provide a secondary access. I think first and foremost you need to be comfortable with this amended plan on a stand-alone basis, that in the event that for whatever reason this access isn't obtained, that you are satisfied with the

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recommendation of your consultants that it can stand alone.

MR. BROWNE: That leads me to my second question. Is there any necessity for a secondary entrance for emergency situations? We always talk about in the past. I don't know on this one if we ever discussed a secondary emergency access for anything. When this is all built out you'll have the businesses there, you'll have the other two, the driveway of the one entrance. Is that one entrance adequate?

MR. WERSTED: In my opinion I think it is. I mean it will be three lanes wide, so if necessary, you know, you can have -- you could have one of those lanes essentially blocked and use the others. I think if there was some type of accident actually on that lane then the emergency personnel would have to be responsible for, you know, maintaining some lane open just to get vehicles in and out and have a flagman so to speak to direct traffic. I think that's how it would operate now just with the hotel and the diner there. I think that's how it would operate with, you know, the proposed development there as

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well.

MR. BROWNE: Could I ask Jerry to comment on that?

CHAIRMAN EWASUTYN: Sure.

MR. BROWNE: Can you comment on that?

MR. CANFIELD: I can't hear you.

MR. GALLI: I think what we're getting into is when the -- one of the reasons why we also had that access was for secondary emergency vehicles coming out of the City of Newburgh, and any kind of mutual aid, that they would come up 17K, they wouldn't come 84 to Union Avenue. They would come up Broadway or actually come in -- they would actually come up 17K and come in right from that entrance right there, come in around to the back of the building. That was one of the reasons why I remember we set that entrance up also. For that particular reason I think they just -- that's why they're just asking you, Jerry, if that was adequate with only the one entrance instead of having the one on 17K for emergency vehicles.

MR. CANFIELD: The answer to your question is yes. Fire protection wise it's

1
2 always better to have two access points. As the
3 site stands, although you may have three lanes
4 going in off of 300, you still only have two
5 lanes going into the site. With one small
6 occupancy, Chili's being the size that it is, one
7 entrance in and out may be okay. As the other
8 buildings become occupied the need and the
9 potential, okay, becomes greater obviously. So
10 in terms of fire protection, with one entrance in
11 and out with the complex completely build out;
12 no, it is not the best scenario. Yes, a
13 secondary entrance would better facilitate fire
14 protection for the site.

15 MR. DONNELLY: In an emergency could
16 you get across the physical land from 17K with
17 curbing or whatever else is there or is that an
18 impossibility?

19 MR. GALLI: The swale.

20 MR. CANFIELD: There's an elevation
21 difference. The site is actually lower than
22 Route 300. 17K is just the opposite, it's
23 higher. So without that entrance --

24 MR. GALLI: And the guardrail you have
25 to crash through.

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MR. BROWNE: So again, for me I'd like to see us have something in the verbiage of approving this that they are asking for currently --

MR. DONNELLY: What happens if the Thruway Authority will not convey the land?

MR. BROWNE: Then they can't build it out anymore. They have to go back and redesign the whole project.

MR. MENNERICH: Or they have to go back before the Planning Board and let us know the type of tenants that are going to be there and we can visit the safety issue again and the traffic, how the light is working on 300. I would like to see that left on the plans. I don't have a problem with the first three occupants going in using 300 but I don't think we should be taking that entrance off the plans at this point. It may become necessary down the road but let's wait and see if that happens. If they want to put in more tenants they should have to come back before the Planning Board, tell us what the tenant is, what the traffic impacts are and if there's emergency concerns we'll get it from the fire

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department.

MR. GREALY: There's one other possibility. Part of the complication with the Thruway Authority is that the way this land is defined -- it's not just a matter of crossing the land, it's labeled as without access. That's part of the complication and the process in terms of appraisals and purchasing. I've been involved with some other sites where you did not have the right to full access, all-the-time usage by the normal public. There have been some accommodations where emergency vehicles -- for example, even along 84 I know locations that accommodations have been made where in an emergency you could access. So that may be another way just in terms of the worst case that if Thruway came back and said we're not going to give you full access there, we could have an arrangement where we make an emergency access, that that does away with this whole issue of without access which is really the complication here. Thruway doesn't have a major issue I think in dealing with us, it's the way that that land was taken along Route 17K. It was taken without

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2 right of access. There are numerous locations
3 where emergency vehicle accommodations are worked
4 in. That may be an option, that we're covered.
5 If we never get the full access we could at least
6 cross that and make some accommodations, deal
7 with the guide rail. Part of that driveway was
8 originally built there.

9 MR. DOWN: Yes.

10 MR. GREALY: So I think that's another
11 alternative.

12 MR. MENNERICH: Phil, is there another
13 alternative -- you mentioned earlier that the
14 proposed access from 17K was going to be a little
15 further to the west on DOT property.

16 MR. GREALY: Yeah.

17 MR. MENNERICH: With just a right turn
18 in?

19 MR. GREALY: A right turn in. What
20 happened was it was getting too close to the
21 intersection and now the grades -- I believe the
22 way the grades of how this was developed, the
23 differential is too steep.

24 MR. MENNERICH: Okay.

25 MR. GREALY: So the location would have

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to be further away from the intersection.

CHAIRMAN EWASUTYN: Bring us along. You're asking that we approve this amended site plan to have two additional tenants besides Chili's under this umbrella. How many additional users would then need a building permit and eventually will need a certificate of occupancy, and what would hold them in place until the traffic light is installed whereas you would not be coming back two months from now saying by the way, I want to amend this phasing plan one more time to accommodate for these three additional users which wasn't part of the earlier approval?

MR. DOWN: The current construction schedule for the traffic signal is it's going to be installed in May, it will be operational in June based on our current construction schedule. Chili's, Panera and Verizon would be the only tenants that we are seeking now to be able to get a CO, operate without the improvements on 300 being completed or the light being functional. Starbucks and Long Horn, if they haven't already received building permits, will be seeking them shortly, but they would be completed after the

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traffic signal would be operational.

MR. DONNELLY: Which of the three are you seeking, Chili's, Panera and --

MR. DOWN: Verizon Wireless. The last two, Verizon and Panera, are part of the retail building.

CHAIRMAN EWASUTYN: What makes you certain that in June the DOT would be issuing the stop light?

MR. DOWN: We have our permits in place for all the road work to be done on 300 plus the traffic signal. So that's complete. We already have selected our contractors. As soon as the weather breaks we're going to start the improvements there. Work will be complete in May, there's preliminary testing and then it goes online in June. That's why we're only seeking those tenants I mentioned. Starbucks will be seeking a building permit as with Long Horn, if they haven't already, shortly. They'll be seeking their COs after the light becomes functional.

CHAIRMAN EWASUTYN: Jerry?

MR. CANFIELD: In the strip mall to the

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east, Panera, Verizon. Is there another occupancy in that building?

MR. DOWN: There will be other occupants. Again, that will be down the road after the light becomes functional.

MR. CANFIELD: The purpose of tonight is we're only speaking of Panera, Verizon and Chili's?

MR. DONNELLY: There are two aspects tonight. One is to alter the construction phasing, if I understand this correctly, to allow Chili's, Panera and Verizon to get COs without an operable traffic light. Any other COs will not be issued until the traffic light is up. That's the construction phasing revision part of tonight's application.

The second piece they're asking for is an amended site plan approval that removes from the site plan the 17K right in, right turn out access. They're two interlocking but separate things.

MR. CANFIELD: The third occupancy on that strip is not an issue tonight?

MR. DOWN: No. It's just the three

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2 tenants we've been talking about. Those are the
3 only ones.
4 MR. CANFIELD: There's three tenants?
5 MR. DOWN: There will be more tenants.
6 That's a 16,000-square foot building. Panera I
7 believe is 4,000, Verizon is probably 3,000. I
8 think we have 6,000 square feet left to lease
9 out. Again, those tenants would come into place
10 and be looking for COs after the light becomes
11 operational.
12 CHAIRMAN EWASUTYN: Any other comments
13 as far as the issuing of the certificate of
14 occupancies for three buildings, no more than?
15 MR. CANFIELD: No.
16 CHAIRMAN EWASUTYN: Frank, you had
17 something to say.
18 MR. GALLI: I don't know if it falls
19 under this category or not but there was a letter
20 written to us about the parking lot --
21 CHAIRMAN EWASUTYN: Okay.
22 MR. GALLI: --that we had a concern
23 about. I see you're trying to get a CO for
24 Chili's --
25 MR. DOWN: Correct.

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MR. GALLI: -- to open up. The parking lot is a mess we understand. The blacktop is crumbling. Maybe it's the subbase, maybe it's not the subbase.

MR. DONNELLY: The building department wrote a letter to the Planning Board.

MR. CUMBERLY: I haven't seen that. Kevin Cumberly with Developers Realty. I'm the construction manager for the project. I haven't seen that letter.

CHAIRMAN EWASUTYN: We just received it today.

MR. CUMBERLY: Right now we have binder down in phase I, it's been striped. It was done at the very end of last year and it was wet and snowy and it was a heck of a time trying to get it down but the guys got it down. There were a couple bad spots which we filled in and there was a water leak that had to get repaired, so we had to take up part of that. Thankfully it was minor and not the finish. There were a couple of rough spots which we fixed the worst spots of it. You know, we are asking if we can open up on binder and we're going to get the finish done for the

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2 entire site with the possible exception of around
3 Starbucks depending upon where they are at the
4 time and the 17K access in May before we open up
5 a lot of these other tenants. There's no -- any
6 spots that were crumbling have been repaired and
7 filled in. There's one soft spot over here and
8 over there that got filled in when they came in
9 and did the patch. There was a little bit of
10 trenching that had to be done after the fact.

11 The 17K access is actually boxed out
12 and curbed and has drainage in it. If you have
13 any concern about us doing it, we really want to
14 do that access because the tenants really want it
15 and we think it's good for the center. You know,
16 it's all blocked off with guardrails here and the
17 pile processed stone up here. There's some dirt
18 on the binder that will be cleaned up. Overall I
19 don't think it's in too bad of shape. I'd be
20 happy to walk around with the building officials
21 and address any issues that they may have.

22 MR. GALLI: Was the CO tied to the
23 finished product or the binder product?

24 MR. DONNELLY: I thought the phasing
25 resolution allowed the bonding of the top coat so

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2 that it wouldn't -- since it's ongoing
3 construction you don't really want to put down
4 that top coat and then harm it, so I thought it
5 was going to be bonded. That's my memory anyway.
6 I can pull out that resolution and look.

7 CHAIRMAN EWASUTYN: In looking through
8 Tilford's letter which we'll give you a copy of,
9 and I'll ask Cliff Browne to read paragraph one
10 of it, I think we may need to have some kind of
11 mechanism in place to prepare for an earlier
12 remediation of what may be an ongoing
13 deterioration rather than a later correction when
14 it comes to the final top coat.

15 MR. BROWNE: Which paragraph now?

16 CHAIRMAN EWASUTYN: The first one. You
17 can read the date and everything. We just got
18 that as of --

19 MR. GALLI: John, I can give him a
20 copy.

21 CHAIRMAN EWASUTYN: Please. Tilford
22 gave me a copy of that.

23 MR. BROWNE: It's -- how do you say his
24 name?

25 MR. GALLI: Stiteler.

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MR. BROWNE: February 21, 2008. "I would like to address two concerns of mine regarding Chili's Restaurant. The first concern is the parking lot/driveway. I visited the site with Gerald Canfield two weeks ago and it was observed in several areas that the base coat of the blacktop is already crumbling and pumping from the construction traffic. I do not know if this is from a poor subgrade or that the blacktop was installed on frozen ground. This needs to be addressed if it hasn't been already."

CHAIRMAN EWASUTYN: Okay. I think we would like to get your response to that because there has to be something I think in place to make some kind of repair sooner than later on this.

MR. DONNELLY: I just looked at the phasing resolution. What we said was the details of those issues would be resolved in a meeting between Pat Hines, the applicant and the code compliance department as to whether those things had to be completed, bonded. That was in that phasing resolution. If it makes sense we can carry it forward in whatever action you take this

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evening. We didn't want to tie the hands of the code compliance department if they felt that something more needed to be done. Often if things open during construction it makes more sense to bond the top coat in the long run than to put it down and then damage it and have a mess.

CHAIRMAN EWASUTYN: Jerry?

MR. CANFIELD: Typically the top coat -- blacktop of course is a seasonal issue for around here. Typically -- historically I should say, not typically, we have accepted some type of security in lieu of the top coat being put in place. I think what Mr. Stiteler's letter is referring to is some of the soft spots, mostly as Tilford and I walked the site with Dave, the construction foreman is here as well, for Chili's, the site -- the easterly portion of the site around the catch basin, there's some areas that it looks like the base is either pumping or, you know, coming apart, lifting, rolling. There could be several reasons why it's happening. Typically with the time of year the ground may have been frozen or whatever, you didn't get a

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good compaction. I think Tilford's concern is what is going to be done about that. It's not acceptable as a functional parking lot as it stands, so something needs to be done.

I'm sorry, I apologize. I didn't hear your response to that so you may have already addressed this.

MR. CUMBERLY: Well we would be happy to walk around and remove any areas that are broken up and pumping and repair them prior to the Chili's opening.

MR. CANFIELD: I can arrange a meeting with the building department, if it's acceptable, to walk the site. I believe they scheduled something for Tuesday.

MR. CUMBERLY: Okay. I can be there on Tuesday.

MR. CANFIELD: Dave, is that correct?

MR. FOX: I'm not certain of Tuesday but we would be more than willing to work with you on that and get that done.

MR. CANFIELD: We can walk the site.

CHAIRMAN EWASUTYN: In following the resolution where it said there would be this

1
2 coordinated review with your department, Pat
3 Hines, can we see if we can get Pat Hines
4 involved in that also?
5 MR. CANFIELD: You'll do that, John.
6 MR. BROWNE: I have one more. It may
7 be a stupid question, or comment. Just putting
8 the binder coat down, you have raised that in the
9 handicap area so there's no trip hazards to the
10 sidewalks?
11 MR. CUMBERLY: Yeah. Typically you put
12 a temporary feather in there.
13 MR. BROWNE: Just checking.
14 MR. CUMBERLY: I think you're allowed a
15 one-inch differential. We can check it.
16 MR. BROWNE: Okay.
17 CHAIRMAN EWASUTYN: I've read two dates
18 in your correspondence, or I think I read two
19 dates. In one you were looking to open Chili's
20 on the 13th of March, and I think I read some
21 correspondence that said you're looking to open
22 up Chili's on the 10th of March. Why I think
23 that's important, three days for the time period
24 we're at now and any remediation that has to be
25 done has some significance.

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MR. DOWN: I believe it's the 13th.

CHAIRMAN EWASUTYN: Mike, would you like to summarize this for us?

MR. DONNELLY: As I said, you have two things before you. You could just modify the phasing resolution to allow those three stores to open, but that doesn't address the larger issue of the need from the applicant's perspective for an amended site plan because what Mr. Down just told you is what I have been told by the Thruway Authority people, that is that this will be a long and involved process requiring bidding and it will be quite some time before it's resolved. He has made clear to me there is no guarantee that this land will in fact ultimately be conveyed to this particular applicant. They are not putting barriers in the way but the process has to carry itself out and there has to be bidding.

So if you're going to approve an amended site plan I can include the language that says if they acquire those rights they must return, and I don't think the applicant has a problem with that requirement. You must realize

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that it is possible that there will be no acquisition of that and then you need to deal with whether or not the access is adequate or just less than perfect for fire suppression -- fire emergency purposes.

MR. MENNERICH: Is the process going to continue given the comment that was made about no land rights for access across them? I'm getting concerned now that really this is a dead issue, that the Thruway is saying they can't.

MR. DONNELLY: No. The Thruway Authority, in my discussions with them they are willing to convey this land, it's just going to have to be at the best price on a bidding process after a whole host of requirements are met and a meeting of their board. They have a seven-member board that has to approve this. It's going to be a lengthy process. This is the result of changes in New York statutory procedure for the conveyance of unneeded land by State governmental agencies. It's made this a very cumbersome and time consuming process. Since it's going to be through a blind, sealed bid process it may not be this developer that's the successful bidder. I

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2 don't really know what financial interest anyone
3 else would have but anything is possible. So if
4 you're going to approve an amended plan I think
5 you need to recognize that that may be the
6 permanent plan and you need to be satisfied with
7 it. If all works out we'll return to this
8 access. What Phil is suggesting as a possible
9 alternative if it doesn't work out is applying to
10 the Thruway Authority for what is essentially an
11 emergency access way only, if I understood him
12 correctly, that the Thruway Authority might grant
13 on different terms than full conveyance of rights
14 to utilize it for access. But all of those
15 things are ifs and maybes in the future.

16 MR. GALLI: But if they sent this out
17 for bid and this developer didn't get it, then
18 the emergency access part of it is dead?

19 MR. DONNELLY: No. I think what Phil
20 is saying at that point it's possible that no,
21 they wouldn't convey it and allow full access.
22 They may allow an emergency access.

23 CHAIRMAN EWASUTYN: What Frank is
24 saying is suppose someone else buys it --

25 MR. GALLI: Say I won the bid --

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MR. DONNELLY: Then it's over.

MR. GALLI: -- and I don't want to give it up for emergency access either. Then what do they do? Or the guy that does get the bid says okay, we'll give you this but, you know, they want their brother, sister, mother, whatever to have --

MR. DONNELLY: I talked about that issue with the Authority people and they say they have strict anti-flipping provisions in their contract. That opportunist who would want to buy thinking he could sell to this developer, they have some provisions they're confident would prohibit that from happening.

MR. GALLI: The curbing is in, everything is down, it's hard based. The curbing is running right down to the gully, the ditch, whatever you want to call it, the swale. I would like to see it continue on if possible one way or the other.

MR. DONNELLY: I think the applicant has pledged to pursue it.

MR. GALLI: However we have to word it, Mike.

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2 MR. DONNELLY: I can put the language
3 in there that says the applicant has pledged to
4 pursue the right to acquire the access and as a
5 condition of this approval, if he acquires it,
6 shall be required he return to this Board for an
7 amended approval. Recognize at least two things.
8 One is they may not be the successful bidder.
9 Number two, if they change their mind there's
10 probably -- they could bid so low a price that
11 the Thruway Authority wouldn't accept it in which
12 case they don't get the rights and then they're
13 not returning. I'm not suggesting that's going
14 to happen but I think you need to be realistic.
15 MR. GALLI: We have until June
16 basically because that's when the light comes up.
17 CHAIRMAN EWASUTYN: I think what Kevin
18 is saying is they won't know from the Thruway
19 Authority until --
20 MR. GALLI: September, October.
21 CHAIRMAN EWASUTYN: -- late of this
22 year or early spring of next year.
23 Cliff.
24 MR. BROWNE: Is it possible to get the
25 right-of-way quicker than the complete ownership?

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2 MR. GREALY: I believe so. I think the
3 reason why this -- the whole reason why the land
4 has to be put out to public bid is because of the
5 without access limitation. I think that's the
6 main driving force here. If the Thruway went
7 ahead and -- early on in the discussions I was
8 involved with one of the conference calls and the
9 Thruway said we'll give you access and after
10 legal started looking at it they realized that
11 they could open up a can of worms throughout the
12 entire State because the wording without access
13 means that you can't have full access for
14 full-time vehicles. If they permitted it here
15 they would open a slew of applications throughout
16 the State. So the purpose of having to go out to
17 bid is to make sure that they don't open up
18 Pandora's box throughout the entire State.

19 In terms of the fire access, I think we
20 could discuss that with Thruway. I think it
21 would be a much better chance because that's a
22 different issue. It's not opening up that
23 Pandora's box because there are locations that --

24 MR. BROWNE: From my perspective, if
25 you can get the fire access, the emergency

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access, I wouldn't have too much of a problem in favor of the rest of the tenants coming in. Without that I have a big problem with any more tenants going in other than the three you have now. That's where I'm at. So to me if you could get the emergency access, that's okay, great .

CHAIRMAN EWASUTYN: That's not what they are asking for now. What they're asking for now is to have Chili's, Verizon and Panera operate the way the conditions are now and then at the end of June when the traffic light is installed, thereabouts or within weeks or a month thereafter, Starbucks and the steakhouse would be ready for a C of O and they would then be able to access the property based upon the traffic light being in place.

MR. BROWNE: I would not be in favor of that unless they had emergency access.

CHAIRMAN EWASUTYN: I think what he's saying is too they'll never have the emergency access in place or any kind of agreement until next spring.

MR. BROWNE: That's the ownership. We're talking two different things.

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CHAIRMAN EWASUTYN: I think they're going to pursue the ownership first and if that falls apart then they're going back into -- you speak. Go ahead.

MR. DOWN: I think we're going to do it two prong with going and saying we know the ownership process is later this year. In lieu of or as an alternative to we will also pursue getting the emergency access right now. I have no problem doing that.

MR. DONNELLY: Do we then want to consider this evening an amended construction phasing resolution that allows the three COs only without the lot subject to satisfactory sign off for the parking lot condition, hold in abeyance the amended site plan until we find out whether or not you can obtain the emergency access and you can come back to the Board in May or June and either get the amended or have yet another amended plan that shows the emergency? Is that -- Cliff, that would satisfy you?

MR. BROWNE: I think so. That would satisfy me.

CHAIRMAN EWASUTYN: The only other

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question I would raise, and it would satisfy me also, they're looking for a certificate of occupancy by tomorrow. I don't know if a C of O by tomorrow, I don't know if that's reasonable.

MR. DONNELLY: We can't resolve to require a CO. That's going to be Tilford's department's call. We can remove any road blocks by authorizing a change in the phasing.

CHAIRMAN EWASUTYN: What kind of pressure does that put you under, to issue a certificate of occupancy, or Tilford, tomorrow morning?

MR. CANFIELD: I think this is the largest and outstanding glaring issue with this whole project. As far as the Chili's structure itself goes, they're very near. As I said before, I thought they were scheduled for a final Tuesday. The interior of the building is very close. I've been there. I was there yesterday. They are very, very close.

CHAIRMAN EWASUTYN: What agreement has the building department made with the applicant as far as the installation of the permanent/temporary six-foot high fence to go up? When is

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that going to be in place?

MR. CANFIELD: I seen on the plan --

CHAIRMAN EWASUTYN: There's no mention
of --

MR. CANFIELD: Tilford didn't mention
it in his letter. I think he was overwhelmed
with this access issue to be honest with you. In
our conversations I think what they put on the
plan will suffice. It is a six-foot high chain
link fence as opposed to it being open ended to a
construction fence. I think that's what his
concern was, that it wasn't just a temporary snow
fence or a plastic construction fence. Something
a little more permanent such as the chain link.

CHAIRMAN EWASUTYN: So we'll establish
when he wants it in place.

MR. CANFIELD: Yeah. I can't go on
record and say I speak for him, I can only convey
what our conversation was. This most likely will
be acceptable, however it would be best to hear
it from him. That can be a condition, though,
you know, of the CO. I heard originally that
there was a meeting, actually it was supposed to
take place back in December or January with

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respect to the blacktop and the top coat. Is that meeting still on with Pat? Perhaps we can incorporate the fencing in that as well if that's acceptable.

CHAIRMAN EWASUTYN: Do you have something to say?

MR. DOWN: It's just a coordination issue on the construction items. They were discussed at the phasing plan back in December of '07. My construction people are having a little bit of a problem because when they deal with staff out there staff is looking for a little bit more direction from the Board. So I'm kind of caught in a catch 22. I believe it was the three items I listed in my letter, which is the specification of a six-foot high chain link fence on pedestals was one item. The second one was confirm that the landscaping to date is acceptable for the CO for Chili's. The stonewall to be complete prior to issuance of second CO. That's fine. And confirm binder without finish coarse is acceptable for Chili's CO. I assume that will be discussed at that Tuesday meeting walk through on the site with Town staff.

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CHAIRMAN EWASUTYN: Correct.

Karen, have you inspected the landscaping?

MS. ARENT: No, but I will schedule it.

CHAIRMAN EWASUTYN: Okay. Bryant.

MR. COCKS: There was one other issue. Last time they came in they requested -- in part of the amended site plan they moved the pylon sign. That wasn't shown on the new set of plans. I don't know how that's going to be addressed. If we're not making an amended site plan until June and they want to install this, it's in a different spot.

CHAIRMAN EWASUTYN: Good point. I noticed on the plans received late today, which you have a copy of, and the two other plans that that was never shown.

MR. DOWN: The purpose of that, for edification, is to move it closer to the intersection. It gets it off the Thruway property and puts it on Palmerone property. So we avoid not only an access issue but the location of the pylon signs.

CHAIRMAN EWASUTYN: Bryant is saying --

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MR. COCKS: If we're not doing an amended site plan today then it's going to be in a different location than what was approved.

CHAIRMAN EWASUTYN: It will be an outstanding issue to date.

MR. BROWNE: Can that be a field change?

MR. MENNERICH: As far as Chili's, I mean you don't really need the pylon sign for Chili's. It's pretty well visible from all directions. How soon did you want to get the pylon sign in?

MR. DOWN: It's going to -- all tenants will tell you they'll take whatever additional signage they can get whether they're right on a corner or wherever. Clearly it's more important for the tenants in the rear building. Even though Panera is on the corner, they like the pylon signage. It's really more for the rear tenants. If that's not an issue we can address tonight, that's fine.

MR. DONNELLY: If you could hold that off to the May or June submission it would make everything easier.

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CHAIRMAN EWASUTYN: We can't address it because it's not shown on any of the sheets you presented.

MR. DOWN: I did want to explain it. The purpose is to get it off the Thruway land, put it west closer to the intersection. We'll hold off until the amended site plan application.

CHAIRMAN EWASUTYN: Okay. Frank.

MR. GALLI: So the blacktop issue is a building department issue then, right, as far as it breaking up near the culvert and stuff? That has nothing to do with us?

CHAIRMAN EWASUTYN: Correct.

MR. GALLI: They'll address that out in the field.

CHAIRMAN EWASUTYN: And I think the installation of the fence, when Tilford wants it in, out in the field, and how soon before or after the place actually opens up.

MR. GALLI: That's fine.

CHAIRMAN EWASUTYN: For the record you are?

MR. FOX: David Fox. I'm the Chili's construction superintendent.

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CHAIRMAN EWASUTYN: Right.

MR. FOX: Mr. Canfield mentioned that I had called for a CO inspection Tuesday. Actually Jerry, I want to make that clear to Gerald and the planning commission. My purpose was not for a CO but for a building inspection. It's necessary from a construction standpoint to get an approval for the building itself so we can say Chili's, your building is ready. I understand the request for the CO will be later when the binder situation is taken care of and the fencing situation is taken care of, then we would request the CO. So this meeting -- and I had requested it for Monday, I don't know when they set it -- will simply be for a building inspection.

MR. CANFIELD: What nature?

MR. FOX: A final building. Not a certificate of occupancy but building construction.

MR. CANFIELD: Like a walk-through?
Okay.

MR. FOX: And at that time we could also, while you're there, discuss the timetable for getting the rest of the site ready.

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CHAIRMAN EWASUTYN: So it's kind of like a walk-through to come up with a punch list. Some of the things we discussed today on the punch list is the problem of either the pumping in the parking area or just crumbling of the blacktop itself.

What pumping means is that the ground underneath there is soft and if you kind of step on it it pumps something this way.

MR. GALLI: Okay.

CHAIRMAN EWASUTYN: Mike, do you want to bring us along as to what the action may be?

MR. DONNELLY: One other matter and that is the Thruway Authority sent me a copy of a letter they sent to Kevin Down today. The letter simply says they want to ensure, and I don't think you have a problem with it, that the potential access that might exist there now is closed off. They don't want anybody trespassing, for liability reasons, and attempting to enter the site.

MR. DOWN: The guardrail is currently in place and will not be touched. There is gravel on the other end. So it's not going to be

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used.

MR. GALLI: You can't possibly get on that driveway.

MR. DONNELLY: Taking your last phasing resolution and my chicken scratch, you had issued an amended construction phasing resolution that would include the following conditions: First, the Chili's, Panera Bread and Verizon Wireless buildings shall be eligible to receive certificates of occupancy whenever construction of those buildings and all currently proposed site improvements, save only the traffic signal, have been completed to the satisfaction of the Planning Board engineer, subject to code compliance as determined by the code compliance department. Number two, no further certificates of occupancy shall be issued until the traffic light is installed and operable and emergency access has been obtained and provided to Route 17K. Three, and this condition is just a carryover from last time, additional landscape bonding for the individual buildings to the satisfaction of the Town Board shall be posted before the Chili's certificate of occupancy is

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issued. Now, if they have been installed than the bonding won't be required. No further certificates of occupancy shall be issued until the stonewall is completed to the satisfaction of the Planning Board engineer. Am I correct there? That would mean the stonewall has to go in before Panera Bread and before Verizon Wireless.

MR. DOWN: Correct.

MR. GREALY: Yes.

MR. DONNELLY: Next, the applicant shall be required to meet with the code compliance department and the Planning Board engineer in order to complete the necessary remaining details of construction phasing, most particularly the condition of the parking lot and the need for temporary fencing. If required, financial security satisfactory to the Town Board shall be posted to secure completion of any incomplete items. That plus the other resolutions I think carry forth the current state of affairs. It would mean that beyond the three COs we're talking about, the applicant would have to return with an amended site plan showing either full access because they obtained the

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rights to utilize the Thruway Authority property or a site plan showing emergency access across that property. No further COs are going to be issued until one or the other or some other plan that doesn't have any access that's satisfactory to you has been shown and approved. I think that's what we have agreed to tonight.

MR. DOWN: Yes.

CHAIRMAN EWASUTYN: Comments or discussion from Board Members. Frank Galli?

MR. GALLI: No additional.

MR. BROWNE: It's good.

CHAIRMAN EWASUTYN: The only thing I would request of Phil Grealy or Kevin Down, we would like to have copies of letters of correspondence that you have with the Thruway Authority, the DOT in reference to this project just so we know how it's moving along.

MR. DOWN: Do you want everything from the beginning or --

CHAIRMAN EWASUTYN: No. I think from this point forward. It's interesting you say from the beginning because this Board does have an interest in being kept in the loop and we

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somehow always seem to be a little bit behind on this project. So from here on out -- it's very important when we reach that period in May that we will be discussing the amended site plan that we have some kind of history and we know what we're getting ready for.

MR. DOWN: Would copies be sent to Dina and she would distribute it?

CHAIRMAN EWASUTYN: Correct. You can e-mail Dina, if it's possible to e-mail. You could actually direct it to Ken Wersted, keep him in the loop for traffic, and then we'll manage the distribution within the office.

MR. DOWN: We'll see that it's done.

CHAIRMAN EWASUTYN: Having heard the conditions for approval for the phasing plan for Newburgh Retail Developers/Palmerone Farms, I'd move for that motion.

MR. MENNERICH: So moved.

MR. BROWNE: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second -- was that Cliff Browne?

MR. BROWNE: Yes.

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CHAIRMAN EWASUTYN: I have a second by
Cliff Browne. Any discussion of the motion?
(No response.)
CHAIRMAN EWASUTYN: I'll move for a
roll call vote starting with Frank Galli.
MR. GALLI: Aye.
MR. BROWNE: Aye.
MR. MENNERICH: Aye.
CHAIRMAN EWASUTYN: And myself yes. So
carried.
MR. DOWN: Thank you very much.
(Time noted: 8:44 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: February 27, 2008

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

----- X

In the Matter of

LAXMI PROPOSED DUNKIN DONUTS
(2006-23)

5277 Route 9W
Section 40; Block 2; Lot 20
B Zone

----- X

SITE PLAN

Date: February 21, 2008
Time: 8:45 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD
KENNETH WERSTED

----- X

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

LAXMI PROPOSED DUNKIN DONUTS

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CHAIRMAN EWASUTYN: The next item of business this evening is the Laxmi proposed Dunkin Donuts.

We received a telephone call toward the end of the day today from the engineering company, Bohler Engineering, stating that the applicant wasn't ready this evening and they would like to have it adjourned.

I did call them back and asked them to send us a letter. At this time they did want to adjourn it.

(Time noted: 8:45 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: February 27, 2008

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

----- X

In the Matter of

MOUNTAIN VIEW SUBDIVISION
(2008-04)

West side of Mountain Cuew Road
Section 14; Block 1; Lot 142
AR Zone

----- X

CONCEPTUAL SKETCH PLAN
NINE-LOT SUBDIVISION

Date: February 21, 2008
Time: 8:46 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: JUSTIN DATES

----- X

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MOUNTAIN VIEW SUBDIVISION

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CHAIRMAN EWASUTYN: The last item of business we have this evening is the Mountain View subdivision. It's a conceptual sketch plan for a nine-lot subdivision to be located on the west side of Mountain View Road north of the intersection of Route 300. It's in an AR Zone and it's being represented by Justin.

MR. DATES: Yes.

CHAIRMAN EWASUTYN: Your last name, Justin?

MR. DATES: Dates. Justin Dates from Maser Consulting.

CHAIRMAN EWASUTYN: Thank you.

MR. DATES: The parcel, as the Chairman said, is located on Mountain View Road. It has two segments of frontage along there. Along the west side it does have frontage along the New York State Thruway. The site is about 23 acres in size. 9 acres of it is wetlands under the jurisdiction of the Army Corp. We have had the site visit with the Army Corp and they confirmed it. We're just awaiting the jurisdictional determination letter.

The site is in the AR district which

MOUNTAIN VIEW SUBDIVISION

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permits single-family homes with a lot size of 40,000 square feet.

We are not in any Town water or sewer districts.

The proposal for this site is a nine-lot subdivision, all single-family homes. It is serviced by a private road approximately 900 feet in length. Eight of these lots have access on the private road, one lot has access to Mountain View Road.

Each lot will be served by an individual well and septic system.

We do have two stormwater management areas to mitigate for stormwater runoff.

We have done preliminary deep and percolation tests on this site and that dictated the location of the septic systems for each lot. That's about it.

CHAIRMAN EWASUTYN: You look familiar. Were you at the public -- some public hearings that we've had?

MR. STARACE: Yeah. Boundaries and setbacks, buffers and setbacks way back. Gould Place, the access they wanted on that. I live on

MOUNTAIN VIEW SUBDIVISION

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Gould Place.

CHAIRMAN EWASUTYN: Fine.

MR. STARACE: They wanted to access that subdivision.

CHAIRMAN EWASUTYN: Comments from our consultants. John, drainage?

MR. SZAROWSKI: I'll go through them quickly. It looks like there will be greater than a tenth-acre disturbance, so we'll be looking for a permit from the Army Corp.

It will be subject to Orange County Department of Health for the approval of the septic and wells.

Now you're saying one of the lots already, is that lot 1 that has access to Mountain View Road?

MR. DATES: Yes. Lot 1 is the only one that we're proposing access to Mountain View.

MR. SZAROWSKI: That was one of the comments, Pat asked about the access to Mountain View.

We would be looking for the highway superintendent's comments.

You'll need a private road access and

MOUNTAIN VIEW SUBDIVISION

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maintenance agreement --

MR. DATES: Correct.

MR. SZAROWSKI: -- per Town code.

The map identifies a private road. Lot lines should run to the center of the road. We ask that that be amended --

MR. DATES: Sure.

MR. SZAROWSKI: -- to show that.

That's the extent of the engineering comments.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Our first comment was regarding the lot that's on Mountain View Road. Did you guys put that on there, because then you have the septic system in the back of the lot?

MR. DATES: We originally did have all the lots accessing the private road to pull them off of Mountain View. In doing the septic testing we actually had -- we had to switch them around, kind of rotate them around, and the septics -- the favorable perc tests and the land. That's why we had just that single lot accessing Mountain View Road.

MR. COCKS: I understand why but we've

1
2 really been trying to make kind of hamlet type
3 neighborhood areas. I just kind of felt having
4 that on the private road and providing kind of a
5 buffering back on Mountain View would kind of,
6 you know, make the subdivision a little more
7 cohesive. That lot is just going to kind of feel
8 like not part of the subdivision whatsoever.
9 It's just going to be hanging out over there by
10 itself. If there's no way to do a septic system
11 in the front of the lot that's one thing, but --

12 MR. DATES: The areas that we're
13 showing for the septic are somewhat conservative.
14 There is going to be additional -- you know,
15 vegetation is going to be kept. Mr. Starace, the
16 owner, he would like to keep as much of the
17 existing vegetation as possible and work the
18 houses and the septic around into each lot. So
19 we are going to take that into account. It just
20 so happens that the soil testing didn't permit
21 such a configuration like we originally had
22 anticipated.

23 MR. COCKS: Okay. Also lot 2, I was
24 just going to ask if you guys could move the
25 driveway a little further away. I mean it's

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going to be directly across from the existing driveway. Those people are going to access the private road; right?

MR. DATES: Correct. There is actually -- currently in place there is a fifty-foot wide access strip for the adjacent lot.

MR. COCKS: There's two or three houses there.

MR. DATES: That are currently accessing it. Yes.

MR. COCKS: Two?

MR. DATES: Yeah.

MR. COCKS: Okay.

MR. DATES: We can spin the house so that it fronts on the private road. That's no problem. We can preserve the vegetation along Mountain View. That isn't a problem.

MR. COCKS: That would be great.

The driveway location on lot 9, just kind of flip flop that around. There's going to be a whole bunch of curb cuts next to each other there once you move it. I don't know if the septic area is going to be right on top of that. Just look at the location just so that there's

MOUNTAIN VIEW SUBDIVISION

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not a whole bunch of curb cuts right in a row.

MR. DATES: Okay.

MR. COCKS: Lot 6 -- I know there's a lot of stonewalls in the back of this site. I was going to see if you guys could try to reposition some of the lot lines and try to use the stonewalls as lot lines, or maybe kind of make it an amenity for houses, maybe kind of like a courtyard. I know there's a ninety-degree angle with the house on one of the lots. I think it was lot 6.

MR. DATES: We did try -- where some of the breaks are we tried to put the driveways through there. We can work with that and preserve whatever stonewalls we can like you're asking for.

MR. COCKS: Okay. The stormwater area right there, it looks like there's going to be a stonewall that's going to be coming right through it. I didn't know if it was possible to shift it and use that as a boundary. I think that would be a nice area for the house there, to have a stonewall in the back of the drainage pond. I think that would be a nice amenity to have. I

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know the wetlands are right up against it but it's going to be fenced anyway. I thought you might be able to use that.

MR. DATES: Once we get into the grading, the actual sizing of the basins, we can see how we can incorporate that into the design.

MR. COCKS: Okay. And then in the bulk table just have the dimensions of all the lots, not just the minimum requirements.

As of right now this won't require any variances. That's about it.

CHAIRMAN EWASUTYN: Okay. Karen Arent?

MS. ARENT: Going on what Bryant said, while you're looking at using stonewalls for property lines, if you could look at lot 1 and lot 9, a different divider just to see if -- I guess see where you can use your stonewalls as property lines.

Street trees should be shown on the plans.

Stormwater management plans will need to be -- stormwater management plants need to be shown on the plan. PVC black coated wire should be shown around them.

MOUNTAIN VIEW SUBDIVISION

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I had similar comments to Bryant and Pat Hines. That's it.

CHAIRMAN EWASUTYN: Comments from Board Members?

MR. GALLI: I just have two. Is that called Earth Drive? Is that a street there? A stormwater management area?

MR. DATES: No. There's an existing Earth Drive that comes into the site. It's just like a dirt road, it's not --

MR. GALLI: Just for curiosity, how long is the driveway for lot 7?

MR. DATES: Probably about 700, 800. Close.

MS. ARENT: It's 1,000.

MR. GALLI: 1,000 feet. That's some driveway. That's the only two questions I had.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I guess from a concept standpoint it's okay.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I have no questions.

CHAIRMAN EWASUTYN: Would the Board be willing to approve the conceptual sketch plan?

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(No response.)

CHAIRMAN EWASUTYN: I'll move for that motion.

MR. GALLI: So moved.

MR. BROWNE: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Cliff Browne. Any discussion of the motion?

(No response.)

MR. MENNERICH: With the understanding the houses are going to be moved as discussed in the consultants' memos; right?

CHAIRMAN EWASUTYN: Correct. Without there being any further discussion, I have a motion on the table by Frank Galli, I have a second by Cliff Browne that we grant conceptual approval to the sketch plan subject to the applicant making the revisions from the recommendations of Karen Arent's memo and Bryant Cocks.

I'll move for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MOUNTAIN VIEW SUBDIVISION

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MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

MR. COCKS: John, this abuts the Thruway so we would have to declare our intent for lead agency.

CHAIRMAN EWASUTYN: Okay. Thank you. I'll move for a motion to declare our intent for lead agency.

MR. GALLI: So moved.

MR. BROWNE: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

MR. DATES: Mr. Chairman, one question. We have to come back with a revised sketch; correct?

CHAIRMAN EWASUTYN: No. The next time

MOUNTAIN VIEW SUBDIVISION

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you do come back with a revised sketch you'll
show the revisions based upon the comments that
you received tonight.

MR. DATES: Correct. Thank you.

(Time noted: 8:55 p.m.)

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

----- X

In the Matter of

LEON ORZECZOWSKI SUBDIVISION
(2005-59)

Extension of Preliminary Approval

----- X

BOARD BUSINESS

Date: February 21, 2008
Time: 8:55 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD

----- X

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LEON ORZECZOWSKI

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CHAIRMAN EWASUTYN: Dina, do you want to discuss Board business.

MS. HAINES: Sure. It's for the Leon Orzechowski subdivision. It's a letter from Gerald Zimmerman dated February 13, 2008. He's just requesting the extension of the preliminary approval. His current approval will expire on March 21st. The 180-day extension will be valid through September 17, 2008.

CHAIRMAN EWASUTYN: Okay. I'll move for that motion.

MR. MENNERICH: So moved.

MR. GALLI: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

(Time noted: 8:56 p.m.)

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

----- X

In the Matter of

QUARTERLY SITE INSPECTION

----- X

BOARD BUSINESS

Date: February 21, 2008
Time: 8:56 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD

----- X

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CHAIRMAN EWASUTYN: When everyone has a chance, would you call Dina as far as what Saturday you might be available for a site inspection? Based upon the majority of what that date might be, we'll move for that site inspection. Okay.

(Time noted: 8:56 p.m.)

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

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

----- X

In the Matter of

EXETER LITIGATION
(2002-26)

Discussion by Michael Donnelly, Esq.

----- X

BOARD BUSINESS

Date: February 21, 2008
Time: 8:57 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD

----- X

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CHAIRMAN EWASUTYN: Mike Donnelly, you wanted to bring us along on a few things.

MR. DONNELLY: If I could. I had told you last time two of the matters that were in litigation were to be argued in the Appellate Division. Both of them were, one on February 11th, one on February 15th.

The first was Exeter. Exeter was a very interesting appeal . You have to realize when you argue an appeal you're arguing to four judges, not a single judge. This was a very lively bench. Not just for us. As a matter of fact, I was talking to another lawyer today and he had a case later down the calendar and he said they were lively throughout.

Right away two things happened. Remember, one of the things that Exeter is arguing is the Town should have done a more thorough SEQRA evaluation of the traffic impacts of the rezoning. Mr. Golden stood up and he wasn't a sentence into his argument when the presiding judge said Mr. Golden, I'm scratching my head here. The Town upzoned this property therefore lowering density. What kind of traffic

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2 study does it have to do for that? So they
3 clearly recognized the heart of that issue, and
4 frankly I think Rick had to dance around that.
5 That was the issue that he won on in the court
6 below that. That suggested the possibility that
7 the court could reverse Judge Slobod, bring us
8 back to the old ordinance, but I don't want to
9 read the tea leaves too carefully.

10 Jeff Scully, who was then the Town
11 attorney, argued next, and I suppose either
12 because the court was anxious to find out the
13 answer or not recognizing, though Jeff tried to
14 tell them, that I had the Planning Board and he
15 had the Town, said Mr. Scully, isn't this lot
16 line change a subdivision under your definition?
17 He tried to avoid the issue and didn't quite
18 answer it, so I knew it was going to hit me.
19 When I stood up, after I said good morning I said
20 before I say anything more I need to answer the
21 presiding judge's question. Yes, this
22 subdivision is clearly --this lot line change
23 clearly fits the definition of a subdivision,
24 however just because it fits the definition does
25 not mean a subdivision approval is what was

1
2 granted, and this applicant who agreed to the lot
3 line change method of review throughout the
4 process should not now be allowed to challenge
5 the nature of the approval that he willingly
6 obtained. One of the other judges said so you're
7 saying he should be equitably estoppel, a fancy
8 legal term from pursuing that argument, and I
9 said that's correct. So they seemed to see the
10 issue. They wanted to make clear that we were
11 not going to dance around the fact of the matter
12 that any redrawing of lot lines is technically a
13 subdivision.

14 It was an interesting argument. I
15 think the three of us walked out not quite sure
16 where they were going with it, but at least this
17 panel of judges were clearly thinking about the
18 issues and were really alive.

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20 (Time noted: 9:00 p.m.)
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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X
In the Matter of

MEHR & KANE LITIGATION

Discussion by Michael Donnelly, Esq.

----- X

BOARD BUSINESS

Date: February 21, 2008
Time: 9:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
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MR. DONNELLY: I then argued the Mehr and Kane appeals. You remember I did so primarily because I wanted to make sure that they knew about the River Keeper case that went to the Court of Appeals. So when I said that, I think the answer is in the briefs, and our position has been buttressed by the Court of Appeals decision and River Keeper, I'm sure you're all familiar with it, and Judge Miller looked at me and said I'm very familiar with it, I was on the panel that got reversed. The Court of Appeals saw the issues differently.

I think they had no trouble with the important argument for us, which is probably the chance that this case will become a significant one, and that is that pronouncement of a conceptual approval is a type II action and not subject to SEQRA compliance because the nature of it is that kind of preliminary step to enable the applicant to now go design his plans and it can be issued before a SEQRA action is taken.

In terms of the twenty-year old

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E.I.S., I really think the River Keeper case keeps us in good stead.

They had no questions. They were not a lively group. They were nice enough to let me argue because I was three minutes late and they could have cut me off but it went smoothly. My thought process, unlike the other one, is I think we will do fine in that appeal.

(Time noted: 9:03 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: February 27, 2008

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

----- X

In the Matter of

THE MARKET PLACE
(2004-54)

Discussion by Michael Donnelly, Esq.

----- X

BOARD BUSINESS

Date: February 21, 2008
Time: 9:03 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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
KAREN ARENT
JOHN R. SZAROWSKI
GERALD CANFIELD

----- X

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

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MR. DONNELLY: There were two other matters that I wanted to bring to your attention. One is The Market Place. You may remember when we did the SEQRA Findings we were aware then that the applicant was going to pursue a subdivision but we had not addressed the potential environmental impacts of that subdivision. We announced in the Findings when the applicant applied for subdivision approval we would then take appropriate SEQRA action. We need to now take appropriate SEQRA action. Frankly, though we talked about it a little bit when they came with the subdivision application, I forgot to follow through on it and it's now come to a head because they're before the Zoning Board and the Zoning Board, since they're not the lead agency, can't act until SEQRA is closed out.

My recommendation to you is not that you do it tonight but, I'll float the balloon, that we issue an amended Findings.

I met with Dave Donovan, my partner, and I've done a little bit of

1
2 research. I've consulted with their attorney
3 because they could have to defend the action
4 we take, and I'm sure that will be the next
5 lawsuit. Our belief is the appropriate
6 method is to issue an amended Findings
7 Statement that identifies both the sign
8 variance application and the subdivision
9 application, conclude for the reasons that
10 will be stated that they don't suggest any
11 new environmental issues, the subdivision is
12 just lines on a piece of paper.

13 The sign application, we did a
14 visual analysis and one of our findings was
15 they would have to submit a satisfactory
16 comprehensive sign development plan, which
17 they have now done. Larry Wolinski did a
18 first draft of that document. I sent a copy
19 but I don't expect anybody to look at it. I
20 want Bryant to take a quick look at it. I
21 have some proposed changes to the language
22 and then I would like to bring it back to
23 you. If it's possible, either as a Board
24 business item or an agenda item, to do it
25 before the March meeting of the Zoning Board,

THE MARKET PLACE

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that would make things more orderly. I'll
get that draft to you and you can take that
from there.

(Time noted: 9:07 p.m.)

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

----- X
In the Matter of

MT. AIRY/R&T ORCHARD SUBDIVISION

Discussion by Michael Donnelly, Esq.

----- X
BOARD BUSINESS

Date: February 21, 2008
Time: 9:07 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
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CLIFFORD C. BROWNE
KENNETH MENNERICH

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
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MR. DONNELLY: The last item, you may remember this from a long time ago, is the Mount Airy litigation that had to do with Colandrea Road, Colandrea Road Extension and had implications for the R&T Orchard subdivision. There was a lawsuit brought, and I have not been defending it, Attorney Don Adams out of the city with Rutherford & Kristy has been handling it. There have been all kinds of ongoing negotiations, most of them private issues between and among the landowners who utilize the roads and what not.

Yesterday afternoon late I got an e-mail saying they have a conference in front of Judge McGuirk next week, the 29th, and they have all these documents including a stipulation of settlement. He needs to report to the court if it is satisfactory to us. A lot more of it plays into the Town Board, the highway superintendent. There's a number of issues there. The vast majority of it is private, how they're going to share the maintenance of the roadway and what not. I

1
2 don't expect that any of us are going to
3 digest that agreement. Very little of it
4 applies to you except insofar as it requires
5 some alterations to the R&T Orchard
6 subdivision in terms of how Colandrea Road
7 Extension is to be configured. I don't think
8 they proposed any significant engineering or
9 planning issues but obviously I think you
10 need to have Pat and Bryant look at them and
11 see.

12 My recommendation to you is we see
13 no major items in the stipulation, it will
14 need to be reviewed by our consultant, and of
15 course it's contingent upon the Town Board
16 buying into it. If the judge isn't happy he
17 can schedule a trial date. It's Judge
18 McGuirk, that will be a year from now and
19 that will give us plenty of time to finalize
20 it. I don't think we really have time to go
21 over the number of details in that proposal
22 on this short notice. I don't see anything
23 that stares out as a red flag as something
24 objectionable.

25 If it's your inclination to report

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it's generally favorable subject to review and approval by the Town Board, I'll do so. If you would prefer me to report that we simply didn't have time and we'll take it up when we can, I'll do that as well.

CHAIRMAN EWASUTYN: I would suggest to the Board we keep apples with apples.
Jerry.

MR. CANFIELD: I have a question for Mike. I did read that in its entirety.

MR. DONNELLY: Good for you.

CHAIRMAN EWASUTYN: You're really involved more than we are.

MR. DONNELLY: It's personal for you.

MR. CANFIELD: Plus he's my neighbor. I have some questions in there. I don't know if I should direct them to you or perhaps Dan.

MR. DONNELLY: Dan is your attorney in the matter.

MR. CANFIELD: The biggest question, there's no great shakes, a lot of this and how we're intertwined in this, us meaning my office, myself, is that the plaintiff is residing in his house without a C of O because of this access.

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That was part of all of this in the beginning.

This settlement, it doesn't mention the enforcement that we had started, the enforcement proceeding, and, you know, I know there was a lot of conversation.

MR. DONNELLY: I'll pass that along to Dan and ask him to follow up with you. They did mention there was a beauty shop. I wasn't even aware of it.

MR. CANFIELD: That's no longer there.

MR. DONNELLY: There's an extra page of the packet that's to be inserted into the stipulation that relates to the beauty shop. It's supposed to go behind paragraph F-6 of the stipulation. Remember there's a whole bunch of e-mails? One of them is an insert to the stipulation. I didn't read it carefully but it has to do with the beauty shop. I'm sure that's an issue for you.

MR. CANFIELD: It stopped at the notary sheets. That's the last I got.

MR. DONNELLY: It's a separate document.

MR. CANFIELD: She relocated. It's

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gone. It's up on 9W.

MR. DONNELLY: I'll tell Dan he needs to speak to you about those issues.

MR. CANFIELD: I found a few typos, too.

MR. DONNELLY: I'll happily tell them that.

MR. CANFIELD: They referenced paragraphs that weren't there.

MR. DONNELLY: Okay.

CHAIRMAN EWASUTYN: I think the Board will have Mike Donnelly proceed in the matter that he has on this litigation.

The other question that I ask of you is would the Board feel comfortable in acting on the revised Findings Statement for The Market Place under Board business or would they prefer to have it as an agenda item?

MR. BROWNE: Whatever is appropriate.

MR. GALLI: I think if the consultants feel comfortable with the information, it's fine with me under Board business.

MR. COCKS: I got it today. I haven't looked at it yet.

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CHAIRMAN EWASUTYN: Just in general.
MR. COCKS: If it's just an amended approval, we usually do that under Board business.
CHAIRMAN EWASUTYN: Karen?
MS. ARENT: I agree.
CHAIRMAN EWASUTYN: John?
MR. SZAROWSKI: I'll speak to Pat.
CHAIRMAN EWASUTYN: Mike, why don't you let us know when you want to circulate and when you want to set it up.
MR. DONNELLY: I have some revisions.
CHAIRMAN EWASUTYN: Let Dina know. Any other comments or discussions while we're here?
(No response.)
CHAIRMAN EWASUTYN: Okay, fine. I'll move for a motion to close the Planning Board meeting of the 21st of February.
MR. GALLI: So moved.
MR. BROWNE: Second.
CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Cliff Browne. I'll ask for a roll call vote starting with Frank

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Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

(Time noted: 9:18 p.m.)

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

I, Michelle Conero, a Shorthand
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