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

----- X

In the Matter of

ICE CREAM PARLOR FOR STERGIOS CORP.  
(2012-07)

North Plank Road  
Section 80; Block 5; Lot 19  
B Zone

----- X

CONCEPTUAL SITE PLAN  
TWO-LOT SUBDIVISION

Date: April 19, 2012  
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  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY

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

APPLICANT'S REPRESENTATIVE: GREGORY SHAW

----- X

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

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ICE CREAM PARLOR FOR STERGIOS CORP.

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MR. PROFACI: Good evening. Welcome to the Town of Newburgh Planning Board meeting of April 19, 2012. I'd like to call the meeting to order with a roll call starting with Frank Galli.

MR. GALLI: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. FOGARTY: Here.

MR. PROFACI: The Town of Newburgh Planning Board receives input from several professionals and consultants with regard to many aspects of the projects, including SEQRA determinations. I ask them to introduce themselves now.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh.

MR. COCKS: Bryant Cocks, Planning Consultant.

MR. PROFACI: Now I ask Tom Fogarty to

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lead us in the Pledge of Allegiance.

(Pledge of Allegiance.)

MR. FOGARTY: If you have cell phones, would you turn them off please.

MR. PROFACI: The first item on tonight's agenda is Ice Cream Parlor for Stergios Corp. It's a conceptual site plan on North Plank Road, Section 80; Block 5; Lot 19, located in the B Zone, being represented by Greg Shaw.

MR. SHAW: Thank you. Good evening. As was just stated, the parcel is on North Plank Road, which is New York State Route 32, immediately west of the Alexis Diner. It's in the B Zone and the parcel area is 0.45 acres.

The site has been presently used -- previously used, I should say, as a gas filling station and a vehicle repair facility. It's been in a state of disrepair now for quite a few years. In fact, just recently the canopy, and the fuel pumps, and the fuel tanks have been removed.

What my client would like to do would be to convert the building as it presently exists into an ice cream parlor. We're not looking to

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put on any additions. We're looking just to utilize the existing building.

Also with respect to the site, we are looking to, I would say, redo the site by creating some defined parking areas around the perimeter, a refuse enclosure and vehicle parking, which would be in front of the ice cream parlor, which would have a center area made of pavers of which we could put in some trees, some picnic benches so people can enjoy the ice cream on a nice day outside the facility.

We're here tonight to discuss a provision in your zoning ordinance, which you can call a waiver, which would be a result of a declaration by this Board that because of this building being a re-use and under 2,500 square feet, it would be made a declaration that it would not require Planning Board approval and that any site issues that would come up would be done by the building department.

So Mr. Chairman, that is my presentation. Thank you.

CHAIRMAN EWASUTYN: Thanks. Jerry Canfield, Code Compliance?

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ICE CREAM PARLOR FOR STERGIOS CORP.

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MR. CANFIELD: We discussed at the work session, and Mr. Shaw just reiterated it, the provisions of the exemption. There is nothing on the plan that presented an existing nonconforming front yard setback issue.

Two issues. I believe that that's not an issue -- an outstanding issue, nor is it something that would require a variance because it is existing. There's no increase to the footprint. Should the Board choose to grant this waiver, then there would no longer be a requirement for a site plan, so therefore there would no longer be a requirement for a variance. That's the only issue that I see, which is not an issue. I have no problem with the site.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: I have no comments. I did have the same front yard setback comment as Jerry.

Other than that, if the Planning Board does grant a waiver, I have nothing further.

CHAIRMAN EWASUTYN: For the record, the numbers associated with that waiver as far as the

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code is?

MR. COCKS: 185-56.

CHAIRMAN EWASUTYN: 185-56. All right.  
I'll listen to Board Members. Frank Galli?

MR. GALLI: Nothing on the site plan.  
I had a question on the actual building. The  
color of the building, is it going to be --

MR. SHAW: That has not yet been  
resolved yet. Marshall Rosenblum has been  
retained to prepare the necessary plans for the  
building inspector for the interior renovations  
and also the exterior. The exterior will be  
redone. That's something the Board has to  
decide, whether this comes before you, to the  
ARB, or whether that's put in the site plan mode.  
I really don't know. If it is a requirement,  
that being the ARB; yes, we'll be here and yes,  
we'll present the necessary information to you  
for the building's exterior.

MR. GALLI: Okay. That's the only  
question I had, what it was going to look like.

CHAIRMAN EWASUTYN: Mike, in the past  
how have we managed similar applications?

MR. DONNELLY: We had two, one was

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2 Michetti where we did require ARB approval, but  
3 that may have been uniquely to the facts of that  
4 case because we included some conditions as part  
5 of the waiver. In another case, the Boy Scout  
6 building, we granted a waiver without requiring  
7 ARB approval.

8 Let me ask Jerry, if someone were to  
9 come into your office and propose absolutely no  
10 changes to a building other than exterior surface  
11 treatment to the walls, would you send them to  
12 the Planning Board for ARB?

13 MR. CANFIELD: Probably not.

14 MR. DONNELLY: Okay. I think that  
15 answers the question then, we view ARB approval  
16 as a component of site plan and not necessary  
17 when site plan approval is not required.

18 MR. GALLI: I just didn't want to see  
19 pink polka dots and, you know, cherry dots.

20 CHAIRMAN EWASUTYN: I think it's  
21 extreme but it's a similar case with residential  
22 subdivisions of ten lots or more where the  
23 Planning Board has ARB approval. But again, we  
24 leave it up to the discretion of the building  
25 department to make sure in reality it's

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harmonious with the environment that it's being constructed in.

MR. GALLI: Okay. Just a comparison.

MR. FOGARTY: Are there any seats inside?

MR. SHAW: Yes. There will be forty-five seats.

MR. FOGARTY: Inside?

MR. SHAW: Inside. I believe that is on the plans with respect to the parking schedule. Excuse me. Forty-eight seats inside the building.

MR. MENNERICH: Will it operate year round or will it be seasonal like the Dairy Queen?

MR. SHAW: I believe it will more than likely be seasonal.

MR. FOGARTY: There's only going to be ice cream, not the hot food?

MR. SHAW: This is John Zacharia who is the owner --

MR. ZACHARIA: Good evening.

MR. SHAW: -- of the property, and he's also the owner of the Alexis Diner.



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So John, if you want to interject anything.

MR. ZACHARIA: I would like to make the answer to your question. The outside of the building, it will be stone, I guess normal height of four feet high, and then the rest of it will be stucco.

MR. GALLI: Okay.

MR. ZACHARIA: As far as the operation, if the business is there during the winter, I think to upgrade twelve months out of the year because it's going to be soft ice cream, frozen yogurt, which today everybody I guess likes frozen yogurt, even in the middle of the winter, and I guess Italian gelato.

MR. MENNERICH: Thanks.

CHAIRMAN EWASUTYN: Joe, you haven't had any comments. Do you have any questions?

MR. PROFACI: Not really. Other than; Jerry, will you be monitoring the way this property looks with the stone and the stucco?

MR. CANFIELD: Yes. Typically what happens, should the Board choose to grant this waiver, the next step for the applicant then

1  
2 would be to apply for a building permit through  
3 the building department. At that point we will  
4 review the plans, the renovations, that they  
5 comply with the applicable codes. The  
6 applicant's owner or the applicant has stated the  
7 stone and the stucco. So we will refer back to  
8 the minutes to see what was presented to the  
9 Board. Our involvement or our obligation at that  
10 point would be to see that the building was  
11 constructed as presented to the Board. So to  
12 answer your question in short, yes.

13 MR. PROFACI: Okay. Thank you.

14 MR. FOGARTY: I think there was concern  
15 about the color because sometimes you get an ice  
16 cream store and they want to have bright colors  
17 to attract and things like that. That's where we  
18 were discussing the possibility of having ARB  
19 approval. I don't have a problem with the  
20 waiver. My only concern is that the outside of  
21 the building is done appropriately with, you  
22 know, appropriate colors.

23 MR. SHAW: I think the Board's best  
24 insurance policy is the fact that it's next to  
25 the Alexis Diner. Both properties are owned by

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the same individual. John has done a great job over the years with the Alexis. The last thing he would want to do would be to detract from the Alexis Diner with something that is a little garish.

MR. FOGARTY: That's a good point.

CHAIRMAN EWASUTYN: So Mike, in the process now, the Board would move for a waiver?

MR. DONNELLY: Grant the waiver pursuant to 185-56 B.

I will include one condition, and that is that this resolution is based upon the plans that were submitted and only allows construction of what is allowed on the plans. In other words, you can't go and build a much bigger building.

MR. SHAW: Correct.

CHAIRMAN EWASUTYN: Then I'll move for a motion from the Board to grant a waiver under code 185-56 B.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

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ICE CREAM PARLOR FOR STERGIOS CORP.

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(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: Myself. Thank you.

MR. SHAW: Thank you. Good evening.

CHAIRMAN EWASUTYN: Congratulations.

MR. ZACHARIA: Thank you.

(Time noted: 7:10 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.

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DATED: May 3, 2012

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

----- X

In the Matter of

HILTON GARDEN INN SIGNAGE PLAN  
(2012-06)

Crossroads Court off Route 17K  
Section 95; Block 1; Lot 45.22  
IB Zone

----- X

CONCEPTUAL SITE PLAN  
ARCHITECTURAL REVIEW BOARD

Date: April 19, 2012  
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  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY

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

APPLICANT'S REPRESENTATIVE: ANDREW FETHERSTON

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MICHELLE L. CONERO  
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(845)895-3018

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MR. PROFACI: The next item on tonight's agenda is Hilton Gardens Inn signage plan. It's a conceptual site plan and ARB. It's on Crossroads Court off Route 17K, Section 95; Block 1; Lot 45.22, located in the IB Zone, represented by Andrew Fetherston.

MR. FETHERSTON: Members of the Board, good evening. I'm representing Hilton Garden Inn this evening.

We're looking for three signs. We need to go for a number of variances, and I just wanted to take the Board through what we were seeking. I did two colors just to make it a little easier. We're proposing, I'll say sign number one, an 18-foot tall sign in the right-of-way of Route 17K. This is Route 17K. West is to my left, I-87 north is up the page. We're proposing a 18-foot tall, free-standing sign, double sided so that it can be seen by travelers both east and west on 17K, in the right-of-way of 17K for the reason that when you're traveling eastbound on 17K, the cemetery is built up high, which is at this location. You

1  
2 can't see, when you're traveling west, anything  
3 until you get beyond the cemetery when you're  
4 into the clearing. We're thinking at that point  
5 you're almost getting too far along to realize  
6 that the Hilton is there and to turn in.

7 I have a number of photos I can just  
8 pass through the Board and let you take a look.  
9 I clipped a couple of pages in there so you can  
10 see where I'm speaking of. That sign of course  
11 would require a license and an agreement with DOT  
12 to install the sign, maintain the sign, and if at  
13 such a time the DOT decides that they need that  
14 area of the right-of-way, we would remove the  
15 sign. I think the right-of-way is so wide there  
16 to facilitate a possible replacement of the  
17 bridge. That's what we were thinking.

18 The total frontage on this lot, which  
19 is 95:1;45;21, is about 900 feet. Half of that  
20 could be -- half of that linear feet could be  
21 used for the sign area. So we're entitled to 450  
22 square feet of signage on this lot. We realize  
23 that the sign that we're proposing is not for  
24 that lot.

25 There's a required setback on the sign



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that of course we're not adhering to. The sign setback is 15 feet inside of the property line. We're obviously not adhering to that as well.

I'll go to the signage that's proposed off of the frontage for the lot that the Hilton Garden Inn is sitting on. The frontage is very minor. It's only about 90 feet along the front off of Crossroads Court. 20.75 feet of the area that is allowed for the signage for this lot is already taken up by a building-mounted sign. That 20.75 we got from the Planning Board approval. That was the number that was dictated at that time. So there's only -- let me see. There's only 23 or so feet remaining to propose the signage.

What we're looking for is a directional sign at the bottom of the cul-de-sac. We're proposing to put that close to the right-of-way because, if you go through the photos I have there, when you're standing in the cul-de-sac or driving down the cul-de-sac, there's landscaping there. We wanted to pull that directional sign up nice and close to the pavement so that it could be seen. That sign is also 1 square foot larger

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than what is normally allowed for or permitted for a directional sign. Then we have the tower sign. The tower sign we're proposing in this location. I took a couple shots from the parking lot at the grassy area, the landscaped area there. It's a dead level area. We don't have the benefit of some of the other locations, like the Holiday Inn across the way where they built a shorter masted sign because they had the luxury of being up on quite a good rise. We don't have that luxury anywhere along the frontage here. That's part of the reason we're proposing such a tall stick to hold the sign. The other reason is just south of the property it's wooded. It's completely wooded. It looks like it's going to stay that way. I believe that's part of Stewart. North of us, if you're traveling south on 87, the bridge becomes a visual barrier. If you're looking for a sign that's up in the air, this becomes a visual barrier as well. So we're trying to get a sign up high enough so you have a chance to see it, to spin off right here. I have an aerial also I can show you just so we can see where the off ramp is. I'll bring it up. The

1  
2 Hilton Garden Inn is here. 17K is of course the  
3 bridge that goes over 87. So we're trying to  
4 have people see a sign here before they're  
5 obstructed by 17K. So again, the locations are  
6 -- here's the Hilton Garden Inn. The sign would  
7 be here. 17K is an elevated bridge going over  
8 87. We're trying to give people a chance to see  
9 it prior to swinging around. The Hilton, 17 and  
10 that swing. Do you know what I'm --

11 MR. COCKS: Yeah.

12 MR. FETHERSTON: So that's the reason  
13 for the height. We need a significant area  
14 variance because the frontage on the Hilton  
15 Garden Inn is so slight. That we'll certainly  
16 take up with the Zoning Board, but we were  
17 looking for -- we were looking to get your input  
18 on what we're proposing. I think that's it.

19 CHAIRMAN EWASUTYN: We'll start with  
20 Tom Fogarty. Tom?

21 MR. FOGARTY: I understand where your  
22 concerns are. We have a number of projects that  
23 come before the Town of Newburgh and we do have,  
24 as you know, sign regulations, all right.  
25 They're there for a reason. I'm opposed to a 55-

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foot sign, all right. That then becomes the new standard in the Town. Right now I don't believe we have any sign over 40 feet. It's there for a reason, because the Town of Newburgh has determined that this is what we want our Town to look like.

MR. FETHERSTON: Okay.

MR. FOGARTY: All right. To me, even though you do have some hardships here, none of those hardships, to me, reach a point where you can't live within our sign ordinance.

MR. FETHERSTON: Okay. Thank you.

CHAIRMAN EWASUTYN: Any other comments from Board Members?

MR. GALLI: I don't have a problem with the 18-foot sign or the 4-foot sign. Like I said, they are nice. The 55-foot sign, I think when people travel nowadays they really don't pull off and say here's a Hilton. Most people who stay at a Hilton either book ahead of time or they're Googling it on their way down with their phones, today's technology. I don't think too many people pull off the road and -- if they're looking for a hotel, they're probably looking for

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a Motel 6 or something, they're not looking for a Hilton or one of your higher-end hotels. So a 55-foot sign to me I think is just a little bit too high.

CHAIRMAN EWASUTYN: Any additional comments?

MR. MENNERICH: I was curious. You've been in operation there for a few years now. Why all of a sudden are you asking for all this increased signage?

MR. MILANO: Can I answer? When I built that hotel you guys were in the middle of rezoning. Nobody knew heads or tails about how you can do a sign there. In fact, even though it does have some road frontage, we're surrounded by roads. I know the formula doesn't work with that. We're on this highway here, we have a road here and we're on this road. So we actually have more road frontage than any other hotel in Town. Because of the formalities of that, we can't count that towards our formula. When I went originally to get that sign, nobody knew heads or tails about how to get this done, and I just got involved in running the business. You know, it's

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an issue. The chain itself requires a sign and I've been written up for it. I had a waiver because I said the zoning rules were being changed or amended. So that's kind of why we didn't do it at the time. You know, I want to make sure -- my favorite thing is not a 55-foot sign. That was not my idea. That's the sign company. I had a discussion with them. Okay, why do we want 55 feet? What's so good about that? This is not a road like Route 300 or 17K. This is a major highway. The cars are traveling 65, 70 miles-an-hour. It's a little different than the sign I have at my Hampton Inn or Lowe's or anything with a traffic stop. This is 65 mile-an-hour traffic.

One thing that I did want to put out there is that emergency light there over the clock, that's 15 feet. When you're traveling on a major highway, that is not a lot. It is in this room but on this long stretch of highway it's not. So that was actually the sign company's idea. Not my favorite thing. I went through great lengths with this hotel to make it aesthetically pleasing. I put it back here and

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used the entire six acres for the hotel so that we would border the airport preserve and have privacy. It took great expense to get it back here. This land here, I've never marketed it. That's the lawn that I maintain for that hotel to give it more aesthetics.

The only thing I want to bring to your attention is if you have a beautiful hotel, and this chain itself is one that JD Power awarded many times for the number one mid-scale chain, it's the best name in the business, why are we keeping it a secret. I know what you're saying about people, but there's people that don't do that. What if you're traveling and there's no other hotels, which happens in this area because of West Point, et cetera. Why don't we want a sign. I have a 12-acre site with really no signage at all. That's not a good business move. I worked around it because at the time the zoning was being developed. Now that it's in place, I said I do need these signs, and I have been contacted by the chain regarding that. So the 55-foot sign was not my idea. Everything I do there, the landscaping that's required --

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MR. GALLI: It looks nice.

MR. MILANO: I'm a little shaky with 55 feet myself. He said to me Martin, you're traveling on a highway doing 65 miles-an-hour, that 15 feet, which is that emergency light there, that's not as extraordinary as it would be on a regular road like Route 300.

MR. GALLI: What about those -- I'm sorry, Ken. What about those -- instead of a 55-foot sign, when you travel the Thruway all the time you see the Thruway billboards that have the hotel next exits, then you have signage.

MR. MILANO: I can give you the same thing. You're traveling 65 miles-an-hour --

MR. GALLI: I travel that road every week, Monday through Friday.

MR. MILANO: And there's a sign about this big. I mean you may see it and you know it's your exit, but I mean --

MR. GALLI: The hotels I travel to in Buffalo, Rochester, Massachusetts, I see them all the time with --

MR. MILANO: If you look at Howard Johnson's sign, it dwarfs my hotel, and that



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sign, because it's on the mound, it's light years higher than mine.

MR. GALLI: Howard Johnsons is not even competition, trust me.

MR. MILANO: I know, but they have a sign that dwarfs my sign. On the other side, the Comfort Inn is built on a hill.

CHAIRMAN EWASUTYN: The difficulty we have also, though, is once if it's granted -- you're allowed a 55-foot sign. No matter what, everybody in the Town is going to want to have a sign 55 foot and it is setting a precedent. So the impact isn't as one single individual, it's an overwhelming impact for the Town in its entirety.

MR. GALLI: You do have a beautiful site there. Keep it up.

MR. FOGARTY: It is nice. Is corporate Hilton requiring you to have signage of a certain standard?

MR. MILANO: They do. They have standards. Anything that you do has to follow a plan that they -- they don't want somebody putting up a hodge podge. They're very careful.

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There's a whole sign package that you must follow.

MR. FOGARTY: Do they take into consideration that whatever they have is a corporate guideline and may not follow in the towns that they're building in?

MR. MILANO: It could be amended. You know, that can be amended to whatever the local zoning ordinance are, but I'm just -- I just want to just, you know, state that it's a little different. 55 may be a little, you know, excessive but not a lot excessive. I mean I want --

CHAIRMAN EWASUTYN: It's 15 feet above what the current code is. I do remember when the site plan was before us and there was an issue of signage like this, and at that particular time we weren't in favor of this.

MR. MILANO: Right.

CHAIRMAN EWASUTYN: Ken Mennerich was on the Board. This isn't the first time something like this came up.

MR. MILANO: What I would recommend, because this isn't the only hotel I've had, I've

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been doing this for 25 years, the Thruway areas are different than the local streets. I mean maybe they could have -- there's only a few parcels on the highway that could even be used. Maybe, you know, in the future it would make sense to have a different zoning for the highway property where you're on a major interstate. What I figured out is if I have a nice sign on that property advertising that hotel, one car a day -- one car a day would bring \$150 in, roughly, and 100 days -- if you get one car a day for a 100 days, that's \$15,000. I think this is a good way to generate and bring people off the highway into our area. They're going to spend money with me, they go to Choppers and buy their merchandise, they gas up, they go eat. They're going to patronize our community, and we've got the best name in the business. I don't want to hide that. I have a sign on this building that -- I know my sight is going but I can barely make it out, and that's my place.

CHAIRMAN EWASUTYN: It's a good point, but that's an issue that you would have to bring up to the Town Board because the Town Board is

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the one who adopts the zoning change. It's not a Planning Board matter.

MR. FOGARTY: As another point of that, a lot of those people who do that, they get back in the car and they leave and they don't live in the Town of Newburgh.

MR. MILANO: Okay. That's a good point.

MR. FOGARTY: We're the residents and the thing is we want our Town to have a certain look to it.

MR. MILANO: Right.

MR. FOGARTY: That's why those guidelines are there.

MR. GALLI: When you come down the Thruway you can see your site. It looks nice from the Thruway. It really does. You're coming off 17K, you can see it. Like I said, the hotels around you, I don't think you're competing with those particular hotels. I mean you've got the Knights Inn across of street, you've got the Holiday Inn. God knows that place is going to close up. If you look, Ramada never has any cars in the lot. You go around the Town and you have

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it. I don't know how much more -- I ride by your property a lot and there's always cars there.

MR. MILANO: Well it's an added expense for me that I don't really want to go through because we just went through a tough time. Obviously my payments are always made on time. I believe if we do assign some modification of that sign, that it would be better for me in bringing more business in. Even though you do see that hotel, you know, how do you get to it. It's there and it's kind of tricky to get to. It's not like the other hotels where you get off the exit and it's right there.

MR. GALLI: Say for weddings and things like that. I don't know. 55 feet is high.

MR. MILANO: Okay. I agree. I said the same thing.

MR. GALLI: I drive down 81 in Pennsylvania and I go through Cleveland, you see these monstrous signs and look and say one is higher than the other. They're like 55, 100 feet you see them in the air. They're confusing when you see a ton of them. Everybody wants to be the next highest guy and it seems like tons of hotels

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and you're concentrating up in the air.

MR. MILANO: The higher they are,  
they're difficult to maintain. It's expensive.  
You have to hire a boom truck.

MR. GALLI: If you had a lower one it  
would be easier for you.

MR. MILANO: I agree.

MR. PROFACI: You're saying that the  
sign company recommended this 55-foot sign?

MR. MILANO: Yes, because the -- you've  
got to realize you have all that vegetation. I  
mean I can't go on the New York State Thruway and  
trim the trees. He was a little concerned that  
the growth of the Thruway would grow up and block  
the signage. That's happened in some areas. I  
had a long conversation why 55 and he had his  
concerns because of the distance, the sight lines  
and vegetation. If you could maintain the  
vegetation and it doesn't cover it. These things  
are not cheap. They're very expensive.

MR. PROFACI: I was wondering why you  
couldn't stay at the 40 feet and still make it  
work.

MR. MILANO: I ran that by him and what

1  
2 he said is 55 is definitely better than 40.  
3 That's what he would recommend. And like I said,  
4 15 feet on a highway, I know what you're saying,  
5 it's not as bad as a local municipality. I think  
6 we could live with a shorter sign. Not  
7 extraordinarily shorter.

8 MR. PROFACI: 40 feet is the maximum  
9 height. I don't know if you consider 15 feet  
10 extraordinarily shorter but --

11 MR. MILANO: I think we could probably  
12 live with 40. That wasn't my recommendation. I  
13 didn't want an odd ball thing in front of my  
14 hotel. I would have to shorten it if it didn't  
15 look good.

16 MR. GALLI: We'll help you.

17 MR. PROFACI: Then that's an option.

18 MR. MILANO: Okay.

19 CHAIRMAN EWASUTYN: I drive by your  
20 site every Saturday morning around 4 in the  
21 morning getting into Manhattan, which I do every  
22 Saturday. I think it's one of the most pleasing  
23 sites. I really do. I think it's -- probably,  
24 quite frankly, it's the most attractive site in  
25 the Town of Newburgh.

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MR. MILANO: Thank you.

CHAIRMAN EWASUTYN: I mean that in all sincerity. To me, maybe being around as long as I have, it really is an accomplishment. You're an accomplishment with what you presented there. I looked at your other hotel this morning next to the Starbucks, because now I begin to frequent that, and that seemed to be all booked out this morning. You've been around that long. I remember your father when he made his presentations. The Town has grown a lot since those days. This is a trigger that could backfire for all of us if it reached 55 feet. That's my concern. You can go to the ZBA, but Mike Donnelly is going to put something together because we do have to refer you to the ZBA. We discussed it during the work session, and it really isn't directed toward you, it's directed toward the possibility of an impact throughout the Town. I don't know how else we can help you.

MR. DONNELLY: I took some notes and these are the things the Planning Board wants to bring to the attention of the Zoning Board:

First I want to point out that in their



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experience and observations there is no other sign in the Town approaching the height of this one, therefore it has some precedential importance.

Next, at least in the earlier discussions, and the Board has certainly heard your explanation here, the Planning Board questioned the need, given the existing visibility of your site from the surrounding highway system. Obviously you have your explanation, the high speeds, but that's for the Zoning Board. The Planning Board wants to point out its observation on that score.

Thirdly, the variance for the sign -- land that you don't own, we want to point out we believe that's a use variance, not an area variance. We'll have a different standard. I think you will also need to have this -- again it's the Zoning Board's call but we'll flag the issue for them. You may need to have the DOT apply as a joint applicant because the variance is actually for their land. So I'll leave that to the Zoning Board. We want to flag those as potential issues that we think the Zoning Board

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should consider. We're not recommending either an approval or a disapproval. You've heard the opinion of the Board Members but I don't want the Board Members to step on the toes of the Zoning Board. Those three issues the Planning Board has asked me to bring to the attention of the Zoning Board.

MR. FETHERSTON: Can I ask a question, John? Is my best step to move forward to change the sign from 55 to 40 to remove that issue -- remove that one issue?

MR. GALLI: And go for the two littler ones?

MR. FETHERSTON: Go for the 40 foot tall on the highway, the 18 out on DOT, allow me that time to change the plan, come back to the Board if you feel it's necessary but maybe go to DOT prior to going to -- seek some type of a letter if that easement or license to propose to permit a sign there. I'd certainly like to remove them from the possibility of having to be an applicant.

MR. DONNELLY: If they gave you a license, that might satisfy the Zoning Board in

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terms of standing.

MR. FETHERSTON: Dominic Cordisco is the attorney on the project. He had a conflict and he couldn't attend.

MR. DONNELLY: It's your choice. If you want to regroup and come back, I think that would be all right.

MR. FETHERSTON: I think I'd rather do that than go to the Zoning Board and really go with something that's -- like you said, it's a precedent. I don't really want to be the precedent setter. Do you agree?

MR. MILANO: I agree.

MR. FOGARTY: The other thing is, I may have my numbers wrong here, but you're allowed, I believe it was 378 square feet and you're going for 421. Is that about --

MR. FETHERSTON: We did it a number of different ways. What we're saying is we're taking from the signage that is permitted on this lot and deducting that so that when the applicant -- understand, the same owner owns this lot, but when the applicant comes forward for this lot, they have to deduct that existing signage. I've

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got the numbers a couple of different ways. It's a little convoluted. I'd rather regroup, come back and maybe try and clarify it if I could. I think maybe that's my best way to move forward.

MR. CANFIELD: If I can. Just one thing, Andrew. The way you did the calculations, that's not going to fly. As far as taking the available signage for the vacant parcel, I think you were just hindering your attempt at what you want to do there. And you're right, it is convoluted to do that.

Also I'd like to point out too that should you choose to reduce the height of the sign, which I think is a very good idea, but then that eliminates one variance. Bryant Cocks had identified it, and I believe you had also mentioned in your narrative, so I think you're both on the same page of the variances that are going to be needed. Probably most importantly, it still does not negate the need for a use variance, which may be the most difficult to obtain here.

MR. FETHERSTON: Yeah. That's odd. That's another reason I really want to regroup.

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I want to confer with our attorney and get his opinion on that. It just never came up until now, and I'm very surprised.

MR. CANFIELD: I just wanted to make sure you understood that.

MR. FETHERSTON: Yeah, yeah.

MR. DONNELLY: It's going to be for the Zoning Board to determine whether that's an area for you. We just don't want them not to see that potential issue.

MR. FETHERSTON: Right. Right.

MR. DONNELLY: Maybe Dominic has a legal reason why he believes it's an area variance.

MR. FETHERSTON: I want him to vent his thoughts to my client. Okay.

CHAIRMAN EWASUTYN: Bryant, do you have anything to add?

MR. COCKS: No. Nothing additional besides what was already discussed.

CHAIRMAN EWASUTYN: I thank you for your patience.

MR. FETHERSTON: I thank you for the direction. I want to regroup and come back.

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MR. GALLI: Thank you.

MR. FETHERSTON: Okay. Thanks very  
much.

MR. MILANO: Thank you.

(Time noted: 7:35 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.

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DATED: May 3, 2012

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

----- X  
In the Matter of

MID-HUDSON MARINA  
(2010-09)

River Road  
Section 121; Block 2; Lot 1  
R-1 Zone

----- X

CONCEPTUAL RESIDENTIAL SITE PLAN

Date: April 19, 2012  
Time: 7:35 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
FRANK S. GALLI  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY

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

APPLICANT'S REPRESENTATIVE: GEORGE CRONK

----- X

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

1  
2 MR. PROFACI: The next item on  
3 tonight's agenda is the Mid-Hudson Marina.  
4 It's a conceptual residential site plan located  
5 on River Road, Section 121; Block 2; Lot 1,  
6 located in the R-1 Zone, being represented by  
7 George Cronk.

8 MR. CRONK: George Cronk with Chazen  
9 Companies. I have Nick here as well. He's the  
10 applicant.

11 Basically we met with the Board here  
12 the last day of February and we discussed the  
13 current conceptual plan that we have before you.  
14 The Board asked for a couple of clarifications,  
15 the building department asked for some additional  
16 information regarding some setback issues  
17 regarding the neighboring oil tanks.

18 What we actually submitted to you as  
19 well was a lot of documentation leading up to  
20 where the project is today. As you all know,  
21 it's gone through a couple revisions, a couple of  
22 different approvals throughout the last fifteen  
23 years, so we provided a lot of the former SEQRA  
24 documents, former approved Finding Statements and  
25 information on that level. We also provided full



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copies of the SEQRA comparison that was asked. As you all know, this application right now is actually before the Town Board and they've made the referral here to the Planning Board for your recommendation, as Mr. Donnelly laid out in a letter last fall.

We took this plan and we made some modifications to address some of the comments that the Board had at the last meeting, and I just want to run through some of those very quickly for you so you understand what would change on the plan. We did provide a breakdown of any changes that have occurred as requested.

As far as fire, we've actually widened this road to the 20 feet. I believe one of the consultants had a comment about going over onto one of the neighboring properties. We're going to shift that over just a little bit. We just aligned the center lines. We certainly can shift it over. The existing emergency driveway is about 8 feet wide right now, so we're going to make it significantly wider. It's completely understandable for fire protection and emergency access. In doing that widening it actually kind

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of modified what we were going to do out here in front.

We had kind of a walking area with some benches and trees we were planning to put along the front here. Obviously it's a good view of the river. We did modify this walking path a little bit to work around that emergency access road. We certainly still intend to have that capability for the site for nonresident people to be able to use this walking path to enjoy the view of the river.

The next item that we addressed, which is probably one of the largest items that needed to be addressed before we really could move forward, is the setback requirements from an oil tank. We actually did quite a bit of research on this. I'm personally not the building code expert. I don't work in the building department. We actually have people on our staff that are very knowledgeable of building department codes, and they really looked into this issue. What we were able to determine is that oil tanks are actually permitted based on when the tank was being built. For example, if you built this in

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1980, you followed the guidelines of 1980, which would be, you know, commonsense in that sense. These tanks appear to be built in the early '50s based on conversation. We actually have a FOIL to confirm that just for documentation backup. At that time there was no code for any type of an oil tank, above-ground oil tank, in the fire code at that time. So what we did is we looked at the first code that was developed. It's actually called the 1957 version. It was actually issued in 1956. Everything in that code is actually relative to property lines. It has nothing to do with building, separation distance to other things. So at that time it required a distance of one- and-a-half times the diameter of the tank to a property line. In this case here we don't have that distance requirement. We have a 150-foot diameter tank and we're beyond that. What we did is we moved forward to the 2008 code, which is still the current code. I know they are going to have a revision soon, probably next year. I don't know exactly when. But the current code actually provides two guidelines now. One is where you site the tank on your property relative

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to property lines or rights-of-ways and things of that nature, as well as other principle building structures, what they refer to it as. We technically are not building anything on the property with the oil tanks. With that being said, we're not looking to create something that would be a hazard to anybody certainly moving next door to this. So what we did is we looked into the 2008 code, and in one of the tables in there they actually require you to have a 35-foot separation from an oil tank to a principle building or a primary building. Again, even though we're not on that property, we did provide that 35-foot setback requirement as if we were building on that property. I'm sure an argument could be made that we're not on the property, we're not doing that, but what we're trying to do is to show you from a safety standpoint we're not creating a hazard here. Our intention in doing that involved research on it.

The next item that we addressed was I believe one of the Board Members had a question about the boat launch that's there. We are proposing to keep that boat launch at this time

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purely for emergency use only. For instance, if the police department or water rescue needed to get in that vicinity, they'd have that option. We're not looking to widen it. There are a few sections of concrete that have cracked over the years, so we would want to repair those pieces, but there's no intention of making this a public launch. It would be used for the marina only and it would not be for in and out of the marina itself. We're not looking to do repairs on the site. You know, there's not a maintenance -- in one of the earlier versions there was talk of having a service marina where you could do repairs of your boat, and that actually draws other boaters to that facility. Our applicant feels there's enough other facilities along the river that there's just not a demand for that service at this site. So we're certainly not recommending that or proposing that at this time.

I think those are the main items that we revised for this. I think in summary a lot of this came down to the SEQRA comparison that was originally presented to the Town Board, and I believe you guys should have copies of it all.

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The conclusion that we came to with the SEQRA comparison is that although there are many steps of mitigation that were required with the earlier approved plan sets, we're not increasing any of the impact, the environmental impact that were with those, and we're certainly at this point not looking to remove any of the mitigation that was required with an earlier approved plan set. So I think that's kind of a good over summary at this time -- overall summary.

CHAIRMAN EWASUTYN: I'd like to turn to Bryant Cocks, our Planning Consultant.

MR. COCKS: As mentioned, the applicant did go to the Town Board for the submission of an open development area approval. The Town Board did refer to the Planning Board for their review and recommendation. The applicant is before you now to get scheduled for a consultants' work session for April 24th where we'll discuss the site plan and SEQRA approval issues and the language that will be needed for the recommendation to the Town Board.

As far as SEQRA goes, the Planning Board is the lead agency and we will need to make

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MID-HUDSON MARINA

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a SEQRA consistency determination and closeout  
SEQRA for the Town Board to make their approval.  
So I think at this point the Planning Board can  
discuss scheduling the project for the work  
session.

CHAIRMAN EWASUTYN: And what would be  
the date of that, Bryant?

MR. COCKS: April 24th, next Tuesday,  
at 1:00.

CHAIRMAN EWASUTYN: Do the Board  
Members have questions for Bryant Cocks?

MR. GALLI: No.

MR. MENNERICH: No.

MR. PROFACI: No.

MR. FOGARTY: No.

CHAIRMAN EWASUTYN: Jerry Canfield, do  
you want to take time now to give an opinion on  
the oil tank separation or do you want to wait  
until you --

MR. CANFIELD: I can comment on it,  
John. Thank you.

Mr. Cronk, his firm did spend an  
extensive amount of time in coming up with the  
data that was needed. I've got to say I don't

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totally agree with Mr. Nichol's response, I did call him, from the Department of State, Fire Protection Engineer for the State. He was out of New York State, he was out in Indiana. He didn't recollect your conversation, he had said, without plans to, you know, remind him what it was.

I did do some further research myself this afternoon. There's just one scientific question that I have to answer as far as the properties, the physical properties of the diesel fuel. Basically it's whether it is a stable or an unstable chemical which is going to dictate. If it's a stable chemical, which I believe it is, than the distance may be a mute point. You have 166 feet. The part that I don't really agree with, and I can't in all good consciousness in eyes of fire protection, I can't really grasp or agree with the fact that because the tanks are there and they were put in in the `50s, that that's the code we need to go by, especially when there wasn't even a code in effect at that point. So from a good planning perspective and in good public safety consciousness, I feel strongly that we should apply some type of separation.



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I think I will be prepared Tuesday at the work session. I'll have my answers on that.

CHAIRMAN EWASUTYN: Does anybody have any additional comments for Jerry?

(No response.)

CHAIRMAN EWASUTYN: Continue Jerry, please.

MR. CANFIELD: I did have one other question. Also on your presentation, I don't know if I heard you correctly, but there will be no docks and moorings?

MR. CRONK: I'm sorry. In the last presentation we presented this exact layout here for this. So we're looking for about 24 boat slips.

MR. CANFIELD: There are still --

MR. CRONK: Yes.

MR. CANFIELD: At the last meeting, in January I believe it was, we had discussed that that and the number of moorings to qualify as a marina will be addressed with the Town Board as a zoning amendment, correct, and that still stands? It's not going to be a referral for a ZBA variance?

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MR. CRONK: Correct. Part of the application for the open development area is some zoning language change. I think we had about seven or eight different proposed language changes. The one that the Board seemed favorable towards was modifying the slip count to be a little bit more amenable to our conditions here, both site wise and economic. If they do not grant that, we would have to seek a variance on that.

MR. CANFIELD: Okay.

CHAIRMAN EWASUTYN: Before I turn to Mike Donnelly, I'll move for a motion from the Board to set this up for a Planning Board work session for the 24th of April.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

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MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: Aye.

At this point I'd like to turn to Mike Donnelly, Planning Board Attorney, to speak to us about a SEQRA consistency determination.

MR. DONNELLY: As I had outlined in my earlier letter and as we discussed at the work session, before the Town Board can act on either the zoning change application or the open development area application, and of course before the Planning Board can act on the site plan, we need to closeout SEQRA. It appears from the comparative information you put forth that the impacts of this project are less than those addressed in the EIS, and in the main the mitigation measures do not need to be revised, although they may need to be tweaked somewhat here and there. Under the SEQRA regulations, when that happens the Board can issue what I commonly call a SEQRA consistency determination which says that there's no further environmental review required, except in this case the potential modification to the Findings Statement. We could do that tonight but we don't have the

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document before us. I thought of this afterward. Given that the applicant is going to need to return to this Board before they can go to the Town Board for our assembled recommendations to go to the Town Board, it might be better to have a draft of the SEQRA consistency determination before you at that meeting and vote on it at that time, although I think the conclusion is clear that that's the direction your consultants are recommending you go, and I don't see any reason why you wouldn't follow that. Although I did say at the work session we could do it tonight, I think it might be better, since there's no harm in having the actual document before you when you vote on it. In the past Bryant has prepared them, and I'll work --

CHAIRMAN EWASUTYN: Bryant, our next meeting I believe is the 3rd of May, and then, if that's true, the following one would be the 17th of May?

MR. COCKS: Let me just double check.

CHAIRMAN EWASUTYN: Why I ask the question is I would raise a question would you like to be scheduled for, an example, the meeting

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of the 3rd if you think you would be ready or  
schedule for the meeting of --

MR. COCKS: The 3rd and the 17th.

CHAIRMAN EWASUTYN: It depends upon the  
scheduling. I don't know.

MR. CRONK: From a scheduling point of  
view we're available either of those nights. I  
just don't know what else you -- from the work  
session what would be asked of us beyond what  
we've already presented.

CHAIRMAN EWASUTYN: Michael, can you  
answer that?

MR. DONNELLY: I think one of the  
things that we need to discuss at the work  
session is what will the consultants recommend to  
the Planning Board be in our report on the review  
of the open development area. There can be both  
general recommendations and site specific ones.  
I think we need to get a handle on that. I think  
it would be helpful for us not to be making  
recommendations that are deal breakers for you,  
that you be present when we're formulating those.  
I don't think there's any further SEQRA  
discussion warranted, although it might be

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helpful to prepare, and maybe you could begin to work on it, a new Findings Statement because I think there are some findings that don't apply any longer that we should have a new updated Findings Statement. We could perhaps discuss the content of that as well.

MR. CRONK: That's okay to do except in the research of the Findings Statement specifically. We've been able to find the original approval Findings Statement but we've not been able to find the revised. I don't know if any of the consultants happen to have a copy of that.

MR. DONNELLY: We're going to look further. I think that makes it all the more appropriate we issue a new one that relates specifically to this project.

MR. CRONK: I think that's a great idea.

CHAIRMAN EWASUTYN: George, when then would you like to come back?

MR. CRONK: I'm going to say the 17th would be better. By the time we have a work session, we're going to need time and have

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information back for you guys to review.

CHAIRMAN EWASUTYN: I'll move for a motion to set this up for the Planning Board meeting of the 17th of May.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

Okay for now.

MR. CRONK: Thank you very much.

MR. DONNELLY: Next Tuesday at 1.

MR. COCKS: This will be 1:30. We have one other item before it. We'll make this one second.

MR. CRONK: Can I just ask where --

MR. COCKS: Right here.

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(Time noted: 7:54 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.

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DATED: May 3, 2012



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

----- X  
In the Matter of

GREINER SUBDIVISION  
(2002-33)

Request for an Extension of Conditional  
Final Subdivision Approval

----- X

BOARD BUSINESS

Date: April 19, 2012  
Time: 7:54 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
FRANK S. GALLI  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY

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

----- X

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

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MR. PROFACI: We have two items of Board Business. The first is the Greiner Subdivision. The applicant is requesting an extension of conditional final subdivision approval which will run from May 2, 2012 to November 2, 2012.

CHAIRMAN EWASUTYN: I'll move for that motion.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: Myself.

(Time noted: 7:55 p.m.)

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

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DATED: May 3, 2012

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

----- X  
In the Matter of

MID-HUDSON MARINA  
(2010-19)

Request for Placement on the  
Consultants' Work Session on 4/24/12

----- X

BOARD BUSINESS

Date: April 19, 2012  
Time: 7:55 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
FRANK S. GALLI  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY

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

----- X

MICHELLE L. CONERO  
10 Westview Drive  
Wallkill, New York 12589  
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MR. PROFACI: The second item is Mid-Hudson Marina. The applicant is requesting to be placed on the April 24, 2012 consultants' work session to discuss site plan issues.

CHAIRMAN EWASUTYN: I'll move for a motion to set it up for the 24, 2012.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

I'll move for a motion to close the Planning Board meeting of April 19, 2012.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli and a second by Ken Mennerich. I'll

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MID-HUDSON MARINA

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ask for a roll call vote starting with Frank  
Galli.

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

CHAIRMAN EWASUTYN: And myself. So  
carried.

(Time noted: 7:56 p.m.)

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

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DATED: May 3, 2012