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

----- X
In the Matter of

DRISCOLL SUBDIVISION
(2005-46)

Route 300
Section 34; Block 1; Lots 45,46,32.1,32.2,52.1 & 53.5
Section 60; Block 2; Lot 4
R-3 Zone

----- X

107-LOT SUBDIVISION

Date: April 3, 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: JOSEPH E. PROFACI
- DINA HAINES
- MICHAEL H. DONNELLY, ESQ.
- BRYANT COCKS
- PATRICK HINES
- KAREN ARENT
- GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

----- X

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

DRISCOLL SUBDIVISION

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MS. HAINES: Good evening, ladies and gentlemen. I'd like to welcome you to the Town of Newburgh Planning Board meeting of April 3, 2008. At this time we'll call the meeting to order with a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

MR. PROFACI: Here.

CHAIRMAN EWASUTYN: Myself present.

MS. HAINES: The Planning Board has experts that will 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. CANFIELD: Jerry Canfield, Town of Newburgh Fire Inspector.

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

DRISCOLL SUBDIVISION

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

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

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

MR. GALLI: Everybody stand for the Pledge.

(Pledge of Allegiance.)

MR. GALLI: If you'd turn off your cell phones and pagers and recording devices.

CHAIRMAN EWASUTYN: The first item of business this evening is the Driscoll Subdivision. It's a 107-lot subdivision located on Route 300, it's in an R-3 Zone and it's being represented by Ross Winglovitz.

MR. WINGLOVITZ: Good evening. Ross Winglovitz, Engineering Properties. We're here this evening I guess for preliminary review of the map. A full set of plans had been submitted back in January as part of our F.E.I.S. submission. I do have comments from your consultants, McGoey, Hauser & Edsall and from Garling Associates. If you would like me to

DRISCOLL SUBDIVISION

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discuss them I'd be --

CHAIRMAN EWASUTYN: Let's start with the main concern we have right now is the K-value.

Pat, you can discuss that.

MR. HINES: Our comment number 9, in looking at the profiles for the water and sewer and the roadways, I noticed that the vertical curves didn't comply with the street specifications. A minimum K-value of 50 is required which is somewhere between a 35 and 45 mile-per-hour design speed for the roads. There have been projects in the past that have received waivers but most of those were on dead-end cul-de-sacs with no future connections. The Town Board doesn't typically grant waivers historically to projects that have through roads such as this and a lot of traffic. There are some design concerns and grading concerns that are going to domino through your water and sewer profiles too I think. That was our major issue with the design. I know, Ross, you got my comments yesterday.

MR. WINGLOVITZ: I've gone through

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them. I guess I agree that was the only major comment that really affects the design. The rest is mostly detailing or to just incorporate stuff that was in the F.E.I.S.

The K-values, it's three locations. One is this vertical curve right here at the entry drive, there's one that has a curve here as it goes across the street, and you come down a steep hill here --

MR. HINES: That's probably the major one.

MR. WINGLOVITZ: That's a sag vertical curve so it doesn't -- and there's no entrances that come onto that anywhere near that sag vertical curve. As you're coming down and going up, that's what I mean by a sag vertical curve. It doesn't affect sight distance because obviously you can see right across. K-value, in my understanding in that situation is that it's really for comfort so if you're going fast you don't feel queasy.

MR. HINES: It's design speed.

MR. WINGLOVITZ: We had actually looked at all of those originally at 30 miles-per-hour

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which was the Town speed limit I thought.

MR. HINES: The problem is the Town Code specifically requires that minimum K-value and --

MR. WINGLOVITZ: We looked at it in accordance with ASHTO, the American State Highway and Transportation Officials, for the speed limit of the road being 30 miles-an-hour. It's these two and then there's one here which is a controlled intersection. I don't know if it really applies in this location but these two definitely apply. We believe we meet ASHTO. We might not meet the Town's codes.

MR. HINES: That's the issue. That argument has been somewhat successful in the past. Not that successful. Again, I've never seen the Town on a through road grant a waiver. There are provisions for waivers of that.

MR. WINGLOVITZ: Who would I talk to?

MR. HINES: Jim Osborne.

MR. WINGLOVITZ: I've looked at this one. That one we can probably do some work with. This one, because of going across the culvert and stream, it would end up being a much bigger fill

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across that stream.

MR. HINES: Jim Osborne is the initial contact and then the Town Board is the granter of those waivers. They won't do it without Jim's blessing.

MR. WINGLOVITZ: So I should get to Jim --

MR. HINES: Yeah.

MR. WINGLOVITZ: -- and talk to him about it.

MR. HINES: Some of the other comments are the concrete box culverts weren't shown, and it says to be designed by others.

MR. WINGLOVITZ: We thought they were but we'll check it out.

MR. HINES: It says designed by others.

MR. WINGLOVITZ: The detailed design is not. Correct.

MR. HINES: I didn't see them in the profiles at all.

MR. WINGLOVITZ: We thought they were in the profiles. That's all right. We'll check them and add them.

MR. HINES: A floodplain development

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permit will need to be sought.

In the F.E.I.S. I was under the impression that the sewer mains were going to be brought to the Kroll development, not just an easement. I don't know if that was clear.

MR. WINGLOVITZ: We've always shown that in the F.E.I.S., that we provide an easement to them. We provide a manhole right at the easement location and a stub that goes outside of the right-of-way so if it ever does happen all the work is at the easement outside the right-of-way. There will be an easement right to the property line.

MR. HINES: There's another one further down between two houses.

MR. WINGLOVITZ: There's one here and one right here.

MR. HINES: The concern there, and I've seen it happen, is people move into their houses and tend to think that that's the front yard, side yard and their property and then it gets dug up later on. It's something I'll talk to Jim Osborne about, whether he wants them installed now or later. It's minimum compared to the

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amount of work you're doing on the site.

MR. WINGLOVITZ: That's a true statement.

MR. HINES: That's just a concern. Sometimes it's easier to do that easement work when no one lives there.

Also, all the mitigation measures in the Findings need to be incorporated into the plans.

There were some notes and some restrictions and such that all need to be labeled.

We wanted to incorporate the Findings into the final plans so a set of plans in the field reflected all the information that was brought out as mitigation measures in the Findings.

MR. WINGLOVITZ: Maybe make it a detail or something.

MR. HINES: That could be. See detail for that. That's just an example.

There were some other things that were shown on there. Notes like restricting traffic access. All that needs to be on the plans so

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that someone in the field doesn't have to have the Findings Statement alongside them.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: No.

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Bryant, you had comments in reference to review of this.

MR. COCKS: We're going to need a surveyor's seal and signature. The existing conditions plan shows an engineer's seal and signature.

All easements on the site are going to need to be approved by Mike Donnelly before final approval.

You guys did show the lighting fixtures on a pedestrian scale of 12 feet. Those are in conformance with the guidelines.

Jerry indicated that we might want to have a light actually be the street sign. The

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fire department indicated that they wanted to have some kind of light to show the street name on there. Maybe if we could use a lighting pole to have a street name. I don't know if that's possible.

CHAIRMAN EWASUTYN: Jerry, would you let them know what the fire department is looking for as far as the lighted entryway and the signage?

MR. CANFIELD: Yeah. Ken forwarded Ross comments from a meeting awhile ago with the jurisdictional fire department and they had addressed the concern with if there were street lights to be provided, that they be located to illuminate the street signs. I can forward you those comments.

Also, all the other outstanding fire protection concern issues raised by the jurisdictional fire department and my office have been addressed.

Just a couple additional things. Just the street names, if and when they're determined they have to go before the town clerk for approval.

DRISCOLL SUBDIVISION

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MR. HINES: One of our other comments I had that's hanging out there still is the Army Corp permits for acceptance of those isolated wetlands as mitigation.

MR. WINGLOVITZ: That's exactly what we did with Orchard Hills.

MR. HINES: I don't know if you made any progress.

MR. WINGLOVITZ: I hadn't until I got through this process. If I have to change this my impact will change. Until I got preliminary I wasn't going to go.

MR. HINES: I'm a little concerned that they may not consider the wetlands as mitigation but --

MR. WINGLOVITZ: We have other areas for mitigation that we could do that are even off the -- outside of the units if we had to do mitigation outside. I think we talked about the E.I.S., if we lose a lot to mitigate.

MR. HINES: I didn't know if you had been to them yet.

MR. WINGLOVITZ: I didn't until I finalized.

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CHAIRMAN EWASUTYN: Mike, do you have anything to add at this time?

MR. DONNELLY: In discussion the K-value was the real issue. Most of the other comments can be incorporated in a resolution that requires satisfaction of those matters before final, and then you can do those design elements as you're moving forward with your other agency approvals. I think Pat's recommendation was, and it's for the Board to decide, whether it makes sense to approve it on the condition that you get a waiver where there's so many issues of redesign. I think it might be better to explore the waiver first.

MR. WINGLOVITZ: If it's got to go to the Town Board. I understand entirely.

CHAIRMAN EWASUTYN: Should there be a motion to refer them to the Town Board?

MR. DONNELLY: You could do it with that level of formality. I don't think it's necessary. I think they need to go themselves. I'll send you a draft of the resolution that incorporates this in advance of your next meeting so you can see what else is in there. It's just

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incorporation of the other consultants' --

MR. WINGLOVITZ: The rest of the comments are really not a problem to address as far as the submission -- next submission.

CHAIRMAN EWASUTYN: So we understand, your first approach will be to contact Jim Osborne.

MR. WINGLOVITZ: Right. I'll head to Jim and talk about the locations. I think this is not an issue really in my mind. I'll talk to him about that. These two we'll have to work on.

MR. HINES: If that's a stop intersection --

MR. WINGLOVITZ: It's a yield controlled intersection.

MR. HINES: That should be fine also.

MR. WINGLOVITZ: It's really the bridge which is the sag. Okay.

CHAIRMAN EWASUTYN: We'll wait to hear back from you.

MR. WINGLOVITZ: I understand.

CHAIRMAN EWASUTYN: Thank you.

MR. WINGLOVITZ: Thank you very much.

(Time noted: 7:11 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: April 10, 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
(2005-33)
Route 300 & Route 17K
Section 97; Block 1; Lot 34
IB Zone

----- X

AMENDED SITE PLAN

Date: April 3, 2008
Time: 7:12 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: KEVIN DOWN

----- X

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

NEWBURGH RETAIL DEVELOPERS

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CHAIRMAN EWASUTYN: The following item of business this evening is Newburgh Retail Developers. It's here for an amended site plan although it's listed as an amended construction plan. We discussed it at our work session. The project is located on Route 300 and Route 17K, it is zoned IB and it's being represented by Kevin Down.

MR. DOWN: Good evening. Kevin Down for Newburgh Retail Developers, L.L.C. I'm joined by David Dumere, also of Newburgh Retail Developers.

We had received from the Board back on, I believe February 17th our amended phasing plan approval. I had submitted on March 6th an application to address two items. One was the elimination of the current requirement of the second entrance from 17K. As part of that submission we provided a truck turning plan. The second item was the relocation of the pylon. We met at the work session last -- on I believe the 23rd or 25th of March and discussed the consultant letters from Creighton, Manning and also from John Collins, and also the DOT permit.

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Dave is going to talk about the current schedule we have with the Thruway Authority to get the approval.

MR. DUMERE: Good evening. Dave Dumere. Where we are with the Thruway right now is the Thruway is scheduled -- is working to schedule a public auction for the small piece of property that we need from the Thruway here so that we can get our access through that piece of property and through the DOT property to bring us out onto 17K. As you know, we've been working on it for quite some time. Much of our improvements are already in place on the property, curbing and hard pack is in, drainage is in. We're just waiting for the scheduled public auction to continue on with that process with the Thruway. The problem is we don't know when the Thruway is going to get to do what they need to do to schedule this. There's a schedule that we put out that we're hoping is the correct schedule, but as you know sometimes these things get pushed out a month and a month and a month. We know at the end of the day this is going to happen, it's just a matter of when.

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In the meantime we're under construction on much of the project. We have gone to our traffic consultant, your traffic consultant, the DOT to talk about the access of bringing the project in and out just through the lit intersection here on 300. Everyone has come back with a favorable note on that saying that the project works fully with just one access.

We've submitted to the Town a truck traffic turning movement to show that coming in and out of the site, around the site with both tractor trailers if need be or fire trucks is easily done through the entire project with the tractor trailers and the fire trucks.

We're looking to amend our site plan approval to state that we could open this entire project with the installation of the traffic light on 300. We understand that we have a phased approval right now. That phased approval says we will only be able to open a certain amount of the project. We're hoping that with the traffic light installed we would be able to open the entire project.

The other item on the agenda tonight

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2 for us is a change in the location of the pylon
3 sign. We were recommended to go to the ZBA as
4 the ZBA originally granted us the second pylon on
5 300 -- on 17K. We talked and they're not --
6 they're going to bring this up at the end of this
7 month in their regular meeting. They suggested
8 to us that we bring it up in this meeting and if
9 the Board would agree that the movement is all
10 right, to make it a contingency that we had to go
11 get approval from the Zoning Board of Appeals.

12 The reason we're moving the 17K access
13 is so -- did you get the handouts that we gave
14 during the work session? The reason we're moving
15 it is because when we first worked on the project
16 with the Thruway there was a larger piece of
17 property that was going to be transferred to us.
18 Through that process that got narrowed down,
19 skinnied down, and the pylon sign that was
20 approved originally ended up on DOT property.
21 The Thruway is going to transfer jurisdiction of
22 a piece of property over to the DOT. It would
23 end up on DOT property. No one wants our pylon
24 sign on DOT property. The best place to put it
25 would be to swap it on the other side of that

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access road. It's just the mechanics of doing that at this time. We did bring a plan showing that it's ten feet off the -- our site line to make sure that we go along with the Code. We would like to hear your comments.

CHAIRMAN EWASUTYN: I'll turn to Board Members for their comments at this point. Frank Galli?

MR. GALLI: Nothing on the sign.

What's stopping you, once we give you approval, to continue the whole site, getting the 17K access, not just to say okay, we've got our approval, let's not worry about the Thruway and move on?

MR. DUMERE: There is a condition that we recommended -- some language that we recommended that we fully go forward to try to get that access through the Thruway. It's our intention, it's what we've promised both the Town, it's what we promised our tenants in the development, that we would go forward. It would actually be as much money to rip out all the stuff we put in there than to finish the project and get the access through there. If you've gone

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by there you'll see the curbing and everything is in there. I can't say there's anything that I could tell you that would be a stipulation.

MR. DOWN: I think the language that Mr. Donnelly crafted in the amended approval which was granted back in February requires us, as an obligation, to continue working with the Thruway to obtain the approval, and that once obtained it would be a requirement to come back before the Board to amend the approval. We would need to reappear in front of the Board, get that entrance re-approved and installed. My March 31st submission to the Board I think replicated the language that Mr. Donnelly put forward in the February application. We're fine with that continuing obligation to come back to the Board, get it re-approved and continue the installation.

MR. GALLI: That was before when we approved a couple of your sites to move forward without it. Now you want the whole site to be operational without it.

MR. DOWN: Subject to getting a traffic signal in. We have to get the signal in.

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MR. GALLI: We realize that. You have to get the signal in no matter what you did on the project.

MR. DUMERE: Correct.

MR. GALLI: That's all I have.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I had essentially said the same concern when I was looking over the notes and what not. The one item or one area that I noticed that did not have any input on the information was the jurisdictional fire department. In my opinion if that can stand alone and everybody is happy including the fire department, then I'm okay with it personally. To my mind it's got to stand alone without that entrance forever. Even though you indicate that you want to continue, that's fine. For me, I don't want to approve something that I know could be an issue later. So to me if this thing can stand alone without that entrance period, then that's -- to me that's the way it has to go at this point.

Jerry, have you gotten any input or anything back from -- can this be revised without

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the 17K entrance stand alone from a fire department standpoint?

MR. CANFIELD: We did discuss this in the work session and I did communicate with the jurisdictional fire department today -- as recent as today, and they still voice their concerns about lack of that entrance, ingress and egress onto 17K. I do agree with their concerns and what they present. Keeping in mind that the occupancies on the site are all assembly occupancies, high occupancies. There are also sites near there that could be benefited by that entrance onto 17K. As it stands and as you further propose, the access road -- single access road to Route 300 now will serve your proposed assembly occupancies and an existing motel and an existing diner. Again, I agree that their concerns are valid. They still feel that they definitely would need that additional entrance and exit.

MR. DUMERE: As I think you know Mr. Canfield, the 300 access is a three-lane access. It will be widened. There will be three lanes there. If a car was broken down in that access,

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there still would be two lanes to get around that site.

Also on our site, I understand it's an assembly use but they are one-story sprinklered buildings. The fire need may not be as much as some of the other buildings associated with this project.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The previous time you met with us the Board approved the granting of the CO when you met all the requirements for three of the stores as part of the phasing --

MR. DUMERE: Correct.

MR. MENNERICH: -- without the light in, and then the light's going to be put in and the Board could approve all the stores with the light from a traffic basis except this issue of emergency access. I guess I can't understand why you don't just leave that -- try to get that approval, leave the entrance from 17K on your plans and continue with the process.

MR. DUMERE: Because we can't get COs for our buildings if we leave it the way it is without that access on 17K. We have buildings

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2 under construction and contracts and retailers
3 that want to be open before we can get that 17K
4 access -- maybe before we can get that 17K access
5 in place. Furthermore, we're not in control of
6 the 17K access process. We don't know if 17K
7 will happen ultimately unless the Thruway goes
8 through with what they're telling us and what we
9 think is going to happen here. It's hard for us
10 to go back to our tenants and say go build your
11 building or we'll build our building and put
12 millions of dollars into this property and never
13 be able to open the stores.

14 MR. MENNERICH: Why can't you get COs
15 when you're able to get COs for three of the
16 buildings?

17 MR. DONNELLY: Your resolution said
18 they could get no more until 17K was open and
19 operable.

20 MR. MENNERICH: We could change that
21 resolution. I guess I would prefer to see the
22 resolution change, leave your plans and still
23 show the 17K entrance.

24 MR. DUMERE: Either way would be fine
25 with us. We're looking to get our stores open

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and we're looking to go forward and get our 17K access in place. I think we're all on the same page. I think we're all trying to go to the same place, it's just a matter of the time schedule with the Thruway, which we don't really have any control over.

MR. GALLI: Who do you have to push you to open? We gave you Verizon, we gave you Panero Bread and we gave you --

MR. DUMERE: Chili's is open.

MR. GALLI: Chili's is approved.

MR. DUMERE: Approved and open. We've got Starbucks that's looking to start construction within the next couple weeks. Longhorn will start in the next week. Our rear building is under construction with Panero Bread on the end, Verizon Wireless next to them. On the other end we have a travel agency and we're working on two other stores. It would still give us 3,000 or 4,000 square feet in the middle to have leased and we're not going to lease until we start going vertical on the site. We don't want to do a resolution that says you can do everything but the 4,000 square feet. We'll be

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back trying to get that.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: I have nothing further,
John.

CHAIRMAN EWASUTYN: Mike, what would be
the difference in granting -- one example, Ken
Mennerich is saying that we amend the resolution
to allow -- what's the number of the total sites?

MR. DUMERE: There's three pad sites
and a rear 15,000 square foot building that will
be multiple tenants.

CHAIRMAN EWASUTYN: Our last amended
resolution was to permit for three pad sites to
open without the traffic light being installed.
Now what you're looking for -- we may go in the
direction that Ken Mennerich is saying, to amend
the resolution to allow all the pad sites to open
subject to the traffic light being in place --

MR. DUMERE: That would be fine.

CHAIRMAN EWASUTYN: -- but yet still
showing the --

MR. DUMERE: 17K access here.

CHAIRMAN EWASUTYN: -- 17K access.

Without putting names to the pad sites,

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we can do that also, what's the total pad sites that would be issued C of Os with the traffic light in place one more time?

MR. DUMERE: All of them.

CHAIRMAN EWASUTYN: Can you give me a number, numerically? Is it five? Is it six? What is it?

MR. DUMERE: It's four pads. It's one, two, three and then the building in the back which would be a multi-tenant property.

CHAIRMAN EWASUTYN: Thank you.

MR. DONNELLY: I think the only disadvantage in the alternative that Ken has suggested is this: You're going to allow certificates of occupancy to be issued on a site plan where the basic site work has not been completed, and once they're all issued it's not likely to be completed, whereas if you approve an amended site plan that has it removed, that it's a lot more logical to say we'll allow the development to occur and they can come back and amend it. However, for either version the issue you need to decide is whether or not you are comfortable with allowing more than Chili's,

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2 Panero Bread and Verizon Wireless to go into
3 occupancy without the Route 17K right turn in/
4 right turn out. I think what you need to
5 consider is when this site was originally
6 approved as part of the companion site it was
7 recognized that it would only have Route 300
8 traffic light access, and you required that
9 traffic light. This applicant doesn't own the
10 other land. He's trying to provide that. If
11 your feeling is that if this were the first night
12 of the project that you would not allow this
13 extended development to occur even though it
14 meets the bulk table, then I think you would be
15 justified in saying that no more than the three
16 stores could be opened. When you do that,
17 realize the distinction between the daily traffic
18 safety issue that occurs without the light, the
19 first focus, and why you are intent upon not
20 allowing more than Chili's, Panero Bread and
21 Verizon to open without the traffic light and the
22 possibility on a hopefully never, maybe rarely
23 and in the worst-case scenario a handful of times
24 that an emergency event will occur, that will
25 certainly, as Jerry and the fire department has

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2 pointed out, create difficulty in the area. The
3 driveway will be blocked with equipment, people
4 trying to get in and out of the hotel and any of
5 the users in the site will have to wait until
6 they're able to. It's likely fire engines and
7 other emergency equipment would block some of the
8 lanes on Route 300. The fire police are going to
9 have to probably assist in directing traffic by
10 hand through the 17K, Route 300 intersection, or
11 at least in front of this premises, and all of
12 that is a serious inconvenience to the public and
13 the users of the site. But for you, you need to
14 evaluate whether the possibility that that might
15 occur is a reason why this applicant should not
16 be permitted, even if they never can get the 17K
17 access, to have this site plan approved.

18 It was only the applicant who made the
19 proposal to try to obtain that secondary access
20 for the benefit of its tenants that put the issue
21 before you. I think you need to search whether
22 or not that is such an important public safety
23 issue that warrants not allowing this site to be
24 built to the potential that you originally
25 approved it for.

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CHAIRMAN EWASUTYN: Thank you, Mike.

MR. DUMERE: With all that being said, we still have a whole lot of improvements already into this access and we're trying real hard to get that access done. You know, we've already put hundreds of thousands of dollars into infrastructure on this piece of property with the idea that we're going to go forward and get that.

MR. DONNELLY: If they can't get it the Thruway Authority is going to make them take it all out.

CHAIRMAN EWASUTYN: When do you anticipate all the stores being completely built out? When do you anticipate the traffic light being in place?

MR. DUMERE: The traffic light would be in place at the beginning of June and we would have full occupancy on this project, if I can lease the last remaining 4,000 square feet here, by the end of the year. We're thinking that with the Thruway Authority schedule the way it is right now, we're hoping to have an advertised public auction for the 2,300 square foot space here sometime next month. So how it goes -- if

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2 that happens in April and we win the auction,
3 which would seem likely because unless somebody
4 is trying to stop us from doing that project,
5 there's no use for anybody else there, it would
6 have to go back to the Thruway board in May, in
7 June it would have to go to the State
8 Comptroller's office and the AG's office which
9 takes four to six weeks to get approved there,
10 and sometime in August or September we would get
11 our final closing and transfer of the property to
12 us. During that period of time we would go to
13 the DOT and we'd finalize all the accesses that
14 they've already agreed to, and now and in
15 September and October, somewhere in that period,
16 we'd finalize construction on it.

17 CHAIRMAN EWASUTYN: Frank, having heard
18 Mike's example of how to look at this project
19 based upon what might be a unique emergency
20 response that may occur, the few points over the
21 course of many years, what's your opinion on
22 reviewing this project and looking for granting
23 an amended site plan subject to the traffic light
24 being in place and the issuing of certificate of
25 occupancies?

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MR. GALLI: Vote?

CHAIRMAN EWASUTYN: I'm only asking you as one person for a discussion. Thank you.

MR. GALLI: I just don't feel comfortable with it actually. I really don't.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I would still much prefer to have the fire district say that they could live with it as it is because I don't believe that I could go forward with the thing saying yeah, I have a promise what's going to happen. I understand the intent of where they are coming from but I've been in too many situations where the intent and good intentions never made it. I mean I'm marginal. If I got a nod from Jerry and the fire department, I'm fine. That's the only thing that's hanging me up on it.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The timeframes you've outlined for this to happen and the timeframes for the full occupancy sounds like they're all pretty much in line. Even if there was some delay on the Thruway's part, you would still -- by the time you got to full occupancy you should

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2 have that entrance. I would prefer to see it
3 still on the plans. I would think if it's not on
4 the plans the argument could be made well you
5 have approvals, it's not on the plans, and the
6 Thruway Authority may not push to get this thing
7 completed, it could just die. I think at least
8 when it's shown on the plans you're in a position
9 to say this is what the Town of Newburgh Planning
10 Board wanted.

11 CHAIRMAN EWASUTYN: Joe?

12 MR. PROFACI: I hate to be the only one
13 to disagree but the amount of investment that
14 they have in there already and with the fact this
15 was something that they had come up with on their
16 own, I'm comfortable with the amendment.

17 CHAIRMAN EWASUTYN: And I think back to
18 like Frank, being one individual Board Member, I
19 would agree with what Joe is saying, for the
20 amount that was invested in the site, the fact
21 that the original -- going back to what Pat Hines
22 said, maybe someone may or may not remember it,
23 that the original site plan when it was approved
24 for the Hampton Inn showed this as being the only
25 point of access to this site.

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Any future development, Pat, you said would need a traffic light?

MR. HINES: The highway work permit for construction of that private access road had a condition this would be the only access to the entire 13-acre parcel, which was the size of the entire site. I was a little surprised -- well, the Thruway was involved -- they were able to proceed with this access.

MR. DONNELLY: Maybe we can explore Ken's alternative for a moment. Ken, in your suggestion how many of the stores could open before the 17K access was completed?

MR. MENNERICH: I think they all could be opened.

CHAIRMAN EWASUTYN: That's what he was saying.

MR. HINES: Ken has said it functions without it and Ken --

MR. DONNELLY: It clearly does from a traffic point of view. How would that be any different on the fire issue? I'm just wondering if there was some limitation on the number that wouldn't be a trigger for the fire issues. Right

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2 now the existing resolution says that after
3 Chili's, Panero and Verizon, that no further
4 occupancy can occur until both the light and 17K
5 were in place. What if, and I have no idea if
6 it's satisfactory to the applicant or to the
7 Board or the fire company, you allow some degree
8 of additional occupancy before 17K was put in
9 place but didn't allow full occupancy until 17K
10 was in place? I don't know if that's a workable
11 compromise at all. What is the straw that breaks
12 the camel's back on the fire issue?

13 MR. MENNERICH: Obviously there's no
14 black and white answer. You know, it's
15 subjective judgment. You know, from a planning
16 sense I think everybody realizes it would be
17 better to have it there than not have it there.
18 My concern is once you take it off the drawing --

19 MR. BROWNE: It's gone.

20 MR. MENNERICH: -- it could be gone.
21 At least if it's still on the drawing -- we can
22 change the resolution. We already changed it to
23 allow three to go in. We can allow up to the
24 full development to go in and get COs as long as
25 the light is in. They may have to come back in

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2 the end with an amended site plan taking that 17K
3 entrance off but they'll at least have to explain
4 to us why it didn't work out.
5 MR. DONNELLY: All right. I wonder how
6 the other Members feel about that resolution.
7 CHAIRMAN EWASUTYN: Frank?
8 MR. GALLI: I guess it's all right.
9 CHAIRMAN EWASUTYN: Cliff, go ahead.
10 MR. BROWNE: I had another question. I
11 can't recall when the original plan was done with
12 the light, what was the anticipated build out of
13 this acreage we're talking about currently?
14 MR. HINES: There was a farm. There
15 was no anticipated build out.
16 MR. BROWNE: When the people were
17 talking about having the light as the only
18 access, nobody envisioned what this plan was?
19 MR. HINES: No. The highway work
20 permit for the motel and diner site said that
21 this will be the only access to the entire
22 13 acres and that any future development will
23 require a light at the intersection.
24 MR. BROWNE: With that comment there
25 was nothing saying we anticipate --

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MR. HINES: No.

MR. BROWNE: -- X number of properties that are businesses and meeting places?

CHAIRMAN EWASUTYN: I don't think -- relax for a few minutes. I don't think the DOT would have the authority to restrict square footage.

MR. DONNELLY: No.

CHAIRMAN EWASUTYN: They don't.

MR. DONNELLY: Cliff, to your point. Clearly if because of the limited access a use was proposed that in the judgment of the Planning Board, based upon the advice it received from its consultants and from the fire company, could not from a fire safety point of view be serviced, you would be correct in not allowing approval and you could cut that down to the level of what could be serviced. What I'm hearing of the fire department's concerns are not a life safety issue as much as a significant inconvenience and a bolloxing up of the entrance and traffic, which is legitimate. I'm not questioning it at all. It's somewhat of a different issue than if they had proposed a soccer arena with 20,000 people.

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That simply wouldn't function from a safety point of view.

MR. BROWNE: My question was coming from essentially that if the original thing was thought about it and the occupancy type of thing that we're talking about now occurred, then with that comment I would have to say okay, fine. It's kind of like in the E.I.S. everything was in place, okay, then I could bite that pretty easy. Without having that anticipation, without knowing what kind of build out would be there, I can't personally accept the comment that okay, this was already thought of back then and we put this thing in with that provision and now we're going to take care of things.

MR. DONNELLY: I understand.

MR. BROWNE: That's where I'm coming from.

MR. DONNELLY: Clearly there was no evaluation of what would be there except perhaps what the ordinance would allow. It would always be subject to your site plan review. That's why I said if you pretend that this is the first night of this proposal, that's the pure issue

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2 before you. Could you allow this level or would
3 you allow this level of development on this site
4 with just the one-sided access for the traffic
5 light. It's gotten confused by the fact that the
6 applicant has proposed the access, and you really
7 need to decide the issue on that basis. If Ken's
8 suggestion that the requirement is that it be
9 built, recognize all you created is a potential
10 enforcement issue because once it's fully
11 occupied it would take an affirmative action by
12 the Town to compel it to be constructed. I think
13 that you're hearing that the incentives of the
14 property owner and the desires of the fire
15 company are on the same side, the incentives are
16 aligned. Given that the improvements are nearly
17 complete, although constituting a trespass, I
18 think the chances are very high that this thing
19 will be built. The disadvantage or the flip side
20 of what I said before of what we're proposing now
21 is we're proposing an amended site plan that
22 removes it and then we're contemplating having
23 yet another amended site plan to return it back
24 later on. Ken's solution is more elegant, keep
25 the requirement there and it's just an

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enforcement issue to make it happen in the future but you have the ability to enforce it. Once we remove it with an amended site plan we can never again compel it.

MR. BROWNE: That's the major concern I have.

CHAIRMAN EWASUTYN: So then the action before us is to look to move for a motion for an amended resolution?

MR. DONNELLY: An amended phasing plan that will release the condition that was in your February 21, 2008 phasing plan that then required that no further certificates of occupancy after chili's, Panero Bread and Verizon could be issued until both the traffic light and the 17K access was operable, and to substitute for that condition a requirement that no further certificates of occupancy beyond the three I just mentioned may be issued until the traffic light is operable as the only restriction.

CHAIRMAN EWASUTYN: So really what we're doing, again I'll repeat it, we're granting an amended --

MR. DONNELLY: Construction phasing.

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CHAIRMAN EWASUTYN: -- construction phasing plan subject to --

MR. DONNELLY: To allow Chili's, Panero Bread, Verizon to obtain their certificates of occupancy now and prohibit the issuance of any further certificates of occupancy until the traffic light is installed and operable.

CHAIRMAN EWASUTYN: Okay.

MR. DONNELLY: All of the other conditions of the site plan resolution and the phasing resolution would remain the same. If that plays out, the worst-case scenario is all of the stores can receive certificates of occupancy and be occupied. And if the applicant would not, in this worst-case scenario, actually open the 17K access, the Town could bring an action to compel performance of that site improvement that was shown on the plan. Of course we couldn't compel it unless and until the Thruway Authority actually gave them the land upon which they would obtain the access. If the applicant could not obtain that and did not win the auction, then they would have to return for amended site plan then removing the access.

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CHAIRMAN EWASUTYN: Okay. Jerry, would you be comfortable in conveying this to Charlie Piper as to a rationale in making this decision?

I think why I mention it at this point, having had the opportunity to speak with someone earlier during our work session who we may have not been considerate of acknowledging them in reference to our decision, I think we're going to get back to Charlie and say this was the basis for our decision not to make him feel like he was left out. Do you think that would work?

MR. CANFIELD: Yes, I do. And I think, yes, we discussed it quite thoroughly.

Again just to reiterate, not to keep going with it, but again the issue has never been the internal traffic, the issue has never been whether we could or could not get a fire truck in there. It's plain and simple, and it's basically not just restricted to fire. Basically we're speaking for all the EMS and police as well. With these type occupancies, and it's a very good point, they are one-story sprinklered buildings. However, with a group of these type assembly occupancies coupled with the motel and the diner,

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2 you have a potential of 600 to 800 people in one
3 given area with one access in or out. The issue
4 becomes should there be a catastrophic event of
5 any nature, it doesn't necessarily have to be a
6 fire, a tornado, hurricane, any number of
7 catastrophic events, who knows if and when they
8 will ever occur, but the bottom line still
9 remains that you may have 600 to 800 to 1,000
10 people in a given area with one entrance in and
11 out. The likelihood is yes, you will not have
12 1,000 people you have to move. However, even if
13 you're faced with 100 people that you must attend
14 to, provide medical attention, police protection,
15 some type of crowd control, it still is not a
16 good emergency service position to be in with
17 that many people in one given area with one
18 entrance and exit.

19 In closing just to clarify; yes, I will
20 convey all of the Board's thoughts on that, which
21 I think have all been very gracious.

22 CHAIRMAN EWASUTYN: I think we'll move
23 on the -- the sign has to be referred to the ZBA
24 for a variance; correct?

25 MR. DUMERE: Correct.

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CHAIRMAN EWASUTYN: That would be another action onto itself.
Having heard the conditions for approval for the amended construction phasing plan for Newburgh Retail Developers presented by Mike Donnelly, and it's made part of the minutes, I'll move for that motion.
MR. MENNERICH: I'll move it.
MR. PROFACI: Second.
CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second by Joe Profaci. 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.
MR. PROFACI: Aye.
CHAIRMAN EWASUTYN: Myself yes. So carried. I thank you all.
Do you want to discuss with us the area variance that's going to be needed for the sign?
MR. DONNELLY: Just to bring you up to

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2 date, the sign was given the variance. The issue
3 is whether or not -- it may or may not need an
4 amended variance. The issue is whether or not
5 the Zoning Board implied the condition that
6 variance being for that sign in that location.
7 So I think it needs to go back to the Zoning
8 Board for them to either say you don't need an
9 amended variance or we'll consider the same
10 variance at another location. It's their call,
11 it should not be ours.

12 CHAIRMAN EWASUTYN: It's an
13 interpretation?

14 MR. DONNELLY: It's a clarification of
15 their own position. I know that Grace has
16 discussed it with Dave Donovan. The applicant
17 had written a letter and I think Grace's feeling
18 was I need to present it to my board as a group
19 for us to decide whether or not the variance we
20 already granted will allow this or whether we
21 need to make an amendment. Certainly we can send
22 it over there. One thing our consultants felt is
23 it shouldn't be the consultants' recommendation
24 to this Planning Board that you just allow it
25 because the height and size are the same. I

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think the clarification should come from the Zoning Board. If you want me to write a letter suggesting that clarification, if that's the motion that you're considering, then I'd be happy to do so.

CHAIRMAN EWASUTYN: I'll move for a motion to refer the relocation of the pylon sign to the ZBA for a clarification and to have our Attorney, Mike Donnelly, prepare a letter outlining the intent of this motion.

MR. PROFACI: So moved.

MR. BROWNE: Second.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci. 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.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried. Thank you.

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(Time noted: 7:50 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: April 10, 2008

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

----- X

In the Matter of

JNM REALTY

North side of Route 9W, north of Old Post Road
Section 9; Block 1; Lot 14.11
B Zone

----- X

SITE PLAN

Date: April 3, 2008
Time: 7:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ANTHONY COPPOLA

----- 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 this evening is JNM Realty. It's a site plan located on the north side of Route 9W and Old Post Road, it's in a B Zone and it's being represented by Anthony Coppola.

MR. COPPOLA: Thank you, Mr. Chairman. This project was in front of the Planning Board about a year-and-a-half ago, in October 2006. What we're proposing is basically identical to what we had at that time. We're proposing basically two buildings on Route 9W at the intersection of Cortland Drive. Basically two buildings, a one-story office/retail building of approximately 9,400 square feet and a smaller 3,000 square foot retail building that's adjacent to a pad site.

I'm going to go through a couple things since the last time we've been here. Jason Siegel is here tonight, he's the property owner, he can discuss his easement agreement with Par Valley Condominiums which basically allows this second access. That's something we had in our plan before. I'll let him describe that.

Basically what we've done between --

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over the last year-and-a-half is develop our engineering and show all our details now in the plan in terms of landscaping, site lighting, storm drainage. There's a sewage disposal system that's been designed on the site. We basically developed a full site plan as well as the architectural drawings.

One thing that I think is going to be important to the Planning Board is how this building is perceived. I want to get into that a little bit. We have one major point of discussion tonight. This site is elevated from Route 9W. What happens here, we've done kind of a cross section through here. There's about a ten-foot green strip from the property line to a three to four foot high retaining wall. There's significant landscaping that we've developed in front of that retaining wall but it's basically -- we're showing that here. It's basically raising this parking lot in relationship to 9W. Then there's another sixty or seventy feet or so and then basically the front facade of the building.

One of the real significant things --

1 we received all the consultants' comments.
2 Probably the only item that's significant that we
3 want to discuss is what's happened in the
4 eighteen months in terms of the design
5 guidelines. When we were here in October 2006
6 this was the basic plan that was presented to the
7 Board. It's a concept plan. I believe we
8 received concept approval that night and went
9 ahead and developed all of our details. In the
10 meantime the design guidelines have been
11 implemented and one of the things that's coming
12 up is a desire for us to put the parking behind
13 these types of retail buildings so that there's
14 not an ocean of parking in front of the site. We
15 would basically -- with that type of significant
16 change in the site, we would basically be going
17 back a year-and-a-half to start all over again.
18 All of the engineering work has been done based
19 on this configuration. There's a subsurface
20 storm drainage system. That's where they took
21 their soil testing. Then of course the
22 architecture of the buildings and all the details
23 that we would have to do would have to be totally
24 undone back to square one.
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One thing that we could offer, I think as a bit of a compromise, is we could introduce more landscaping within the parking lot itself. Right now we have basically two peninsulas. There's eight cars, nine cars, eight cars and nine cars. I think without a huge amount of reworking of the site we could introduce more landscaping in the parking lot. We would lose parking spaces and we would reduce the size of our building a little bit. I think that's something that, at the Board's direction, we could look to do. That's basically it in a nutshell.

Jason, do you want to speak to the --
MR. SIEGEL: Sure. Thank you.

Actually, the easement itself was sought at the urging of the DOT who felt strongly that they wished for me to try to negotiate access to the private drive in the interest of public safety. Negotiating for that access and the time it takes for an approval of all the homeowners was the primary reason for the eighteen months being as long as it was.

I believe, Mr. Chairman, you received

1
2 an e-mail of a letter from Par Valley Estates
3 detailing that they have granted us an easement,
4 that it was voted by the board and by the
5 residents, and that they do endorse us developing
6 this site. The easement would allow us, as per
7 the DOT's wishes, to have a right in/right out
8 only curb cut on 9W, which they felt in the
9 interest of public safety would be preferable.

10 CHAIRMAN EWASUTYN: I got that
11 yesterday from Doris Steele and I made copies for
12 everyone.

13 MR. SIEGEL: Thank you.

14 MR. COPPOLA: So this entrance here, we
15 have met with the DOT about, as Jason said. We
16 believe they're going to approve that. We need
17 that in writing from them. That does align
18 exactly with our opposite entrance off Cortland
19 Drive.

20 One of the comments we know we need is
21 we need to include more of the information from
22 their development in our plans, and we will look
23 to do that. I think that's basically it.

24 CHAIRMAN EWASUTYN: Okay. I think
25 there are two points of discussion we have now.

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One is the comprehensive guideline standards, which is a matter of discussion whether the sixteen months that you are absent was due to the fact that you were designing the project or you were waiting to negotiate with other people. So it's questionable.

The other point that we have that you discussed with us is that you've completed most of your engineering for the site.

At this point I'd like to turn to Pat Hines and get a response to that. How much engineering has been completed and how much at this time may still be outstanding.

MR. HINES: Our first comment has to do, and I think it will be echoed by the other consultants, regarding the access road width and the need to provide 26-foot access lanes which Jerry Canfield will comment on.

The topography on the site towards the north end of the site is lacking. Where the site gets steep the existing topo is not shown on the plans, however proposed grading is shown across there. The entire topography is going to have to be filled in on the site. You're grading in a

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detention pond area that has no existing topography.

We're looking for the water line both in the street and then there's a water main valve vault in the vicinity of your subsurface sanitary disposal system that needs to be shown. I don't know if that's the water service to Par Valley or what that water manhole is. Those water lines need to be depicted to make sure there's adequate separation distance from the septic system.

There's just a comment that DOT approval for the stormwater management connections to their pipes as well as access to 9W needs to be reviewed.

We are suggesting that a more definitive right in/right out only curb layout be designed rather than the 24-foot wide access road now to really restrict right turns in and out because there would be the ability to make that left turn should that not be definitively blocked off from happening.

A note requiring staking of the septic system due to the location of it within -- at the minimum setbacks from the property lines.

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We have a comment that the design report for the stormwater management identifies the use of a pervious paving material and they take credit for fifty percent of the water quality volume by using that. We need additional specifications and notes for maintenance if that's going to continue on.

I do have a comment on the stormwater management system. There's a little overkill on the site. You have both an underground infiltration system for water quality and then you're also designing a wet pond which is also there for water quality. There may be the ability to reduce one or both of those to provide less grading or some additional room on the site.

Curb details need to be shown on the plans.

There are some clean-up notes on the septic system which I know your engineer can address. It appears to meet the guidelines, there's just some copied over details that haven't been changed for this site.

The guiderail along the retaining wall is an issue. I know you'll hear from Karen on

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that.

Fencing of the stormwater management basin.

Also, I didn't know if you talked to the DOT regarding relocating the access drive further north and maybe getting a full turning access as you head up the road further away from Par Valley.

MR. COPPOLA: Over here?

MR. HINES: Yeah. I don't know if you looked at that at all to get that. Realizing that Par Valley -- that intersection is proposed to have a light be installed by another project, it may make sense just to leave it there. If the detention pond could be eliminated you may have some additional area over there to provide that. That's our comments right now.

CHAIRMAN EWASUTYN: Your thoughts on what seems to be lacking in the way of engineering details and what you thought were being shown, how close are you to agreeing with the completeness or the incompleteness of it?

MR. COPPOLA: I mean I'd like to say he's ninety percent of the way there on the

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design of the stormwater and the SDS.

MR. HINES: I think the stormwater is overdone.

MR. COPPOLA: Right. I haven't heard that comment before. Maybe he has to come back a little bit.

MR. HINES: You're providing two different practices for water quality. You really only need one.

MR. COPPOLA: I'd like to be optimistic and say we can clean those comments up and this would be good to go in terms of storm drainage and site utilities.

CHAIRMAN EWASUTYN: Karen?

MS. ARENT: I looked up on the concept plan that was before you in October 2006 and it didn't show the retaining wall along the front, which I think is a significant impact.

MR. COPPOLA: I mean we probably did not do the grading at that point, so that's correct.

MS. ARENT: I do have the grading that you did.

MR. COPPOLA: I'm sorry. He may have

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raised that for his storm drainage.

MS. ARENT: Okay. That didn't show the retaining wall which is, I think, a very significant impact to the 9W corridor.

CHAIRMAN EWASUTYN: Since you have the floor do you want to continue on?

MS. ARENT: In my notes I had listed the design guidelines that the project doesn't adhere to or conform to.

Parking is proposed in front of the site. Screening of the parking will not be possible due to the proposed stonewall and the height elevation of the parking area. As Anthony showed on his sketch, you can see that the screening -- the parking will not be screened.

The garbage disposal areas should be away from the main entry and access drive. Those are the design guidelines that the project doesn't adhere to.

We did talk in work session that it might be difficult to adhere to all of those design guidelines but perhaps there's a creative way to minimize the impacts such as the project -- Anthony, you figured out a creative way to

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address the intent of the design guidelines in previous projects. Maybe something can be done creatively here to realize the intent of some of these guidelines.

Another issue that I have was the buffer area and cutting into the buffer. When I read through the buffer regulation it says that you can build walls perpendicular but not parallel to the buffer, so that wall you are showing, it's shown inside the buffer, is removing a lot of the trees and the reason is it's parallel to the buffer. That's another issue. The screening is very necessary in that area to hide the -- to preserve the screening of the existing buildings that are on top of the hill.

MR. COPPOLA: Well that's the intent there, the screening on top of the wall. There's a significant cut there into that hillside.

MS. ARENT: Correct. So somehow -- when I read the buffer regulations it sounds like you're not supposed to do what you're doing.

MR. COPPOLA: We're not supposed to grade inside the buffer or disturb it.

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MS. ARENT: Right. I'll read it to you. "In accordance with the buffer regulations, C (10) on page 10, no grading or other development activity which destroys the vegetation shall be performed or required buffers unless for a use or structure permitted in the buffer pursuant to 185-21 (C)," and when you read 185-21 (C) it says that walls are permitted in the buffer if they are placed perpendicular to the buffer.

MR. COPPOLA: I'm trying to picture what the intent of that is.

MS. ARENT: It was -- yeah, I don't -- I'm not sure.

MR. COPPOLA: Okay.

MS. ARENT: I think it was more for drives and things to go through the buffer and to connect for the emergency services and things like that.

MR. COPPOLA: Okay.

MS. ARENT: I don't know how to address that but I'm just reading to you what the buffer regulation says.

MR. COPPOLA: Okay.

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CHAIRMAN EWASUTYN: Since you've been before us last, as you said it's been about a year-and-a-half, there's been, and Jerry will explain that to you, the building code change as far as road widths.

Jerry.

MR. CANFIELD: We've looked at a lot of our projects. There are new road widths that now apply referring to the new fire code and the 2006 international code. In January 2008 we were permitted to enforce those. There is a 26-foot width requirement.

Also the hydrant location. There were comments with respect to the hydrant location. In work session we had talked that basically as the project is proposed, the entrance off of the Par Valley road basically becomes, in eyes of fire protection, the main entrance. So that hydrant location is a good location. It's relative to probably where the FD connections would be in the back of the building.

MR. COPPOLA: One thing I did want to mention and I forgot, as far as the architecture goes, the intent is really not to do anything on

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the smaller building now until he's -- we get a user, and then we would come back for that. We'll develop the architecture for the larger building.

CHAIRMAN EWASUTYN: What is your proposed tenant for the drive aisle on the north side of the 9,000 square foot building?

MR. COPPOLA: Out over here. I don't think we -- we haven't really developed that side.

I'll let you speak.

MR. SIEGEL: The reason for the drive-through was just to provide maximum flexibility for potential tenants.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: Just regarding the drive-throughs, you're also going to have to look at the width of those aisles. I'm not sure. I know they're both one ways. I'm sure it's not 26. They're probably going to have to increase significantly. I think they're 12 right now.

MR. COPPOLA: Do those correspond to the 26-foot -- driving by the drive through?

MR. CANFIELD: It should be.

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CHAIRMAN EWASUTYN: It should be.

MR. COPPOLA: Okay. That would be significant. We'll look at that.

MR. COCKS: So that was one issue regarding the drive aisle.

I'll also echo Karen's comments regarding the zoning guidelines and the retaining wall in front of the site which is not going to be very visually appealing and not in conformance with the design guidelines.

You're also going to have to look at some of the angles when you're going to be driving up north and south on 9W. The drive-through for the smaller building would be facing the corner of Cortland and 9W, so you're going to have to take a look at that and make sure if that does stay that it's either screened or something to mitigate the impacts visually.

Pat mentioned the grading on the site and any stormwater detention that's going to have to happen.

In regard to deliveries on site, I know aisles are going to have to be widened.

It looks like the angle of that refuse

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2 container in back of the small building, I don't
3 know how a garbage truck would actually get to
4 that. There would be no way, because it's a one-
5 way, for it to back in and take it out of there.
6 I think that needs to be looked at.

7 The sidewalks need to be six feet in
8 width around each building. I think the Planning
9 Board should probably discuss whether sidewalks
10 should be installed on top of the site near
11 Cortland Drive since they're all residences up
12 there and they could potentially use the site.

13 The signage that was shown is a
14 marquise type sign with the name of each business
15 listed on that. That's also discouraged in the
16 design guidelines. The proposed height is over
17 21 feet tall, so maybe the applicant should look
18 at making that a little smaller and redesigning
19 it to lessen the impacts.

20 The lighting shown was at 16 feet.
21 That is in conformance with the design
22 guidelines, and it looks like the fixture is a
23 nice fixture, it's not one of the overhead
24 lights.

25 It looks like there's some type of

1
2 street furniture in front of the front building.
3 Is that benches?
4 MR. COPPOLA: We'll detail that.
5 MR. COCKS: Okay. I made the comment
6 that architectural should be shown for both
7 buildings but you indicated that the second one
8 isn't going in yet.
9 The last time that this was before the
10 Board they did refer it to the Orange County
11 Planning Department. We received comments back.
12 The Board did not declare their intent
13 for lead agency which they would have to do
14 because the DOT is also an involved agency.
15 MR. DONNELLY: I take it the County
16 recommended local determination?
17 MR. COCKS: Yes, they did.
18 CHAIRMAN EWASUTYN: Comments from Board
19 Members. Frank Galli?
20 MR. GALLI: No additional.
21 CHAIRMAN EWASUTYN: Cliff Browne?
22 MR. BROWNE: If you're not going to do
23 the small building at this point what are you
24 going to do with it?
25 MR. COPPOLA: Well, once -- we wanted

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it approved on the site plan. Once he gets a definite tenant we would come back for architectural review.

MR. BROWNE: My concern is if it goes out too far we have something not being done with the one being occupied.

MR. COPPOLA: I guess we would need to show a plan without that building.

MR. BROWNE: That's what I'm thinking.

MR. DONNELLY: If you're not going to build it you either need a true phasing plan or a site plan that didn't have it.

MR. COPPOLA: We actually haven't talked about that, if you would build one building before the other. We would have to show the site plan with one building.

MR. SIEGEL: It would be my hope to, within a reasonable period of time, secure a second tenant. It's just I would be willing to build the first building and seek tenants with the second building. It would be my intent to secure a tenant and in conjunction with the Board and the tenant design the second building. It will be marketed immediately. I just don't know

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how long it would take to get a tenant.
MR. DONNELLY: They either have to have the phasing plan or site plan without it.
MR. BROWNE: A phasing plan.
MR. COPPOLA: Right.
CHAIRMAN EWASUTYN: Ken Mennerich?
MR. MENNERICH: No questions.
CHAIRMAN EWASUTYN: Joe Profaci?
MR. PROFACI: Nothing further, John.
MR. DONNELLY: John, one follow up to AJ's comment earlier. Basically in an appeal to fairness, they have been acting in good faith in the design of this project and have now been overtaken by it seems to me three things, the buffering law, the design guidelines and now changes to the New York State Fire and Building Code. There is a certain and obvious appeal to the argument but it's important to note that it is New York's position that the applicant is bound by the ordinance and regulatory provisions in effect at the time his application comes on for approval. While that action in good faith may be something you can take into consideration in deciding which, if any, of the design

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guidelines you might appropriately waive, they nevertheless do apply.

I will tell you there is a bill in Albany this year, I don't know what its chances of passage are, to require that all regulatory schemes that apply to a given application are those that were in effect on the date of application rather than the date of approval, therefore changes in the ordinance and regulatory provisions apply only on a prospective basis. I have no idea of the success but it's another way of looking at the fairness picture. Right now you're bound, and so is the applicant, by the regulatory changes that have come along before final approval.

CHAIRMAN EWASUTYN: Good advice. If you could elaborate on what you're saying. I think we know one thing we will have to look at and that's the new building codes that Jerry referenced as far as the 26-foot wide access roads. We know we have to look at the north side of the building where right now it's shown as being I'd say 24 feet. I think you'll have to look at some of the building code issues.

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2 I would think that, and the Board might
3 agree with me, we discussed it in a brief manner,
4 Mid-Hudson Holding, we had something before us
5 that did seem to be conceptually appealing, you
6 went back and worked on that in a way that it did
7 seem to balance the thoughts behind the
8 guidelines. I think it would be fair based upon
9 what Mike is saying, I think this Board likes to
10 be fair and reasonable, to see if you could work
11 this site --

12 MR. COPPOLA: Sure.

13 CHAIRMAN EWASUTYN: -- in a more
14 reasonable manner.

15 A minor note, and it's really minor, we
16 are concerned about the block retaining wall
17 along 9W.

18 MR. COPPOLA: Okay.

19 CHAIRMAN EWASUTYN: You did reference
20 having landscaping. Rhododendron Catawbiense are
21 not a plant that you would put along in that area
22 unprotected. Forsythia is the kind of plant that
23 basically, Anthony, that will look nice during
24 the summer months when there's foliage but when
25 there's nothing on there it's just going to look

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wild. If you could really work with trying to work something --

MR. COPPOLA: Okay.

CHAIRMAN EWASUTYN: By all means we're reasonable.

MR. COPPOLA: That's fair.

CHAIRMAN EWASUTYN: I'd like to get the Board to agree to move for intent for lead agency. We would circulate this the way it is realizing that the applicant is going to come back with something that would be a finer magnitude for this point in time. We have a concern in developing 9W.

MR. COPPOLA: Sure.

CHAIRMAN EWASUTYN: This is early on. I think again in reference to the letter we received from Doris Steele, the Board is in agreement that any attempt we could do to improve the 9W corridor is the goal of the Town.

MR. COPPOLA: That's fair enough.

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

MR. GALLI: So moved.

MR. MENNERICH: Second.

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2 CHAIRMAN EWASUTYN: I have a motion by
3 Frank Galli. I have a second by Ken Mennerich.
4 Any discussion of the motion?
5 (No response.)
6 CHAIRMAN EWASUTYN: I'll move for a
7 roll call vote starting with Frank Galli.
8 MR. GALLI: Aye.
9 MR. BROWNE: Aye.
10 MR. MENNERICH: Aye.
11 MR. PROFACI: Aye.
12 CHAIRMAN EWASUTYN: Myself. So
13 carried.
14 If you'd make it a point of speaking
15 with Bryant as far as what might be necessary to
16 circulate.
17 MR. COPPOLA: Okay.
18 MR. COCKS: Are you looking to
19 recirculate to the Planning Department also?
20 CHAIRMAN EWASUTYN: Because of the
21 time?
22 MR. COCKS: Yeah. It's been awhile.
23 Now the back access is approved.
24 CHAIRMAN EWASUTYN: All right. By all
25 means.

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MR. COCKS: If I'm sending it out to everyone else --

MR. COPPOLA: Sure.

CHAIRMAN EWASUTYN: If you could work on --

MR. COPPOLA: I understand. We can do that. We definitely can. Thank you.

CHAIRMAN EWASUTYN: That would be great. I think sitting up here from a procedural standpoint, even looking at the one Jerry brought to our attention, Ross Winglovitz, maybe after redesigning the Dunkin Donuts, this applicant has to be redesigning.

MR. DONNELLY: I think either position as long as it's predictable and fair, I think it's in fairness.

MR. MENNERICH: Mike, in that type of thing if a Town enacted a building moratorium, those applicants that were in before that moratorium could actually continue to --

MR. DONNELLY: I think they would not be caught by the moratorium. One thing the bill would do is it would encourage -- it would actually encourage municipalities to declare

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moratoria earlier and more often. If they think something is coming they would try to rush to declare the moratorium whereas now you don't really need to declare the moratorium near the beginning, you only need to worry if you're near the end of the race and the applicant is winning. There's something unfair about that tripping at the finish line. So that's what legislatures do, they make those decisions on how to treat those things. I have no idea what lobbies are in favor or against this proposal.

(Time noted: 8:15 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: April 10, 2008

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

----- X
In the Matter of

BERLIN, L.L.C.
(2006-30)
Route 17K & Skyers Lane
Section 89; Block 1; Lot 32
B Zone

----- X

SITE PLAN & ARB

Date: April 3, 2008
Time: 8:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: DAVID WIEBOLDT

----- X

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

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CHAIRMAN EWASUTYN: The next item before us is Berlin, L.L.C. It's here this evening for ARB approval. It's in a B Zone and it's being represented by Dave Wieboldt.

MR. WIEBOLDT: This project is here for architectural review. It's gone through a pretty drastic transformation since our previous submission.

Basically this is the elevation that is seen from 17K and the front of the building. At the front corner we've made a large vertical element as a main entry focusing on Dunkin Donuts which is the anchor store. This is the side facade that is seen from the parking area, and we made two projections, reverse gables on the roof that would form an increase to the two, three or four tenants, however that gets divided. I've added details on the roof to break up the large expanse of roof. On the rear of the building we've cut out a section of the roof to form a flat area for mechanical equipment to get everything off the ground, and that would be screened by material that matches the remainder of the building.

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This shows the sign, the pylon sign. The low sign we're proposing for the building to handle the signage is surrounded by a stone base that is actually the end of the stone retaining wall that was shown on the site plan. The sign does show four spaces for signs. Knowing that that's not really a recommended method as stated earlier, however the signage on the buildings on each tenant space, which are little signs over the doorways of each tenant to identify their particular entries, would not be visible from 17K. Our proposal shows this so people passing by will know what the stores are at the center.

This is a sample board of materials. This darker stucco material would be on the base of the building and some detailing up around the top of the building. This is the majority color of the building for the stucco and this is a highlighted area which goes around the pylon and at the corners to try and confine and condense the color. This is the painted color which is the horizontal lines which would be a painted hardboard siding to give a more residential feel, a feel for the space. The blue is the proposed

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2 color for the gutters and the roof edges around
3 the building. This is kind of a combination
4 between the blue and the brown which would be the
5 fiberglass shingles on the roof.

6 CHAIRMAN EWASUTYN: Thank you. Karen,
7 are you in agreement with everything -- the
8 recommendations to the Planning Board?

9 MS. ARENT: Yes. I think the
10 architecture is very much improved and it meets
11 the intent of the design guidelines.

12 We spoke about the possibility of
13 considering the sign, even though it's a marquee
14 type sign, to represent the businesses inside the
15 plaza. The sign is of a scale that's acceptable
16 and reasonable. It's only 8 feet 2 inches total
17 in height. The sign itself is only 4 feet by 8
18 feet in size. So it's a relatively small sign.
19 This project is not asking for any variance for
20 signage. On those grounds I think you might want
21 to consider allowing the marquee type sign.

22 CHAIRMAN EWASUTYN: Comments from Board
23 Members. Frank Galli?

24 MR. GALLI: It's a big change from the
25 last time we saw it. I think it came out pretty

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good.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: It's good.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Much improved. My only question is on the roof where you've got the gables or dormers or whatever those things are --

MR. WIEBOLDT: This area here?

MR. MENNERICH: -- yes -- are they proportionately represented right here?

MR. WIEBOLDT: Are you talking about --

MR. MENNERICH: Those two small things. They look like they're too small for the size of the building.

MR. WIEBOLDT: They're more just to break up the whole length of the roof. It's kind of hard to show graphically but these are to break up the roof. These are little vents in the roof just to break up the large expanse.

MR. MENNERICH: Thank you.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: It looks very nice now.

CHAIRMAN EWASUTYN: Mike, in moving for a motion to grant ARB approval, is there

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something in the resolution you would add?

MR. DONNELLY: In addition to the standard condition I think you should make findings as to why you're waiving that portion of the design guidelines that prohibits marquise signs. Is that the one you were referring to? Karen has told us, and I assume you will adopt her conclusion, that the intent of the guidelines are the signage of the scale that is reasonable and accessible even though it is a disfavored marquise sign, and significantly no variance for height or for sign area, a rather unusual event recently, is being sought.

CHAIRMAN EWASUTYN: Okay. Having heard the conditions for approval in the resolution for the ARB for --

MR. WIEBOLDT: Could I ask one question? There was a question in Karen's review and amongst us. If we went with a building number to identify the site as far as the address, is that considered part of the signage?

CHAIRMAN EWASUTYN: No. Jerry Canfield who managed that, took part in the department for the Town for many, many years.

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MR. CANFIELD: Building numbers are exempt, not included in the signage calculations.

MR. WIEBOLDT: Would you prefer to have that on the pylon sign or on the building itself?

MR. CANFIELD: The pylon itself would be the building number and then suite numbers probably would be required like over each occupancy.

MR. WIEBOLDT: Okay. Thank you.

CHAIRMAN EWASUTYN: Having heard the conditions of approval from our Attorney, Mike Donnelly, for Berlin, L.L.C. ARB, I'll move for that motion.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci and a second by Ken Mennerich. Any discussion of the motion?

MR. GALLI: John, just on the numbers on the pylon sign. It can't be like 30 feet high.

MR. WIEBOLDT: We thought we had you.

MR. GALLI: I was just thinking about that. That's all.

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2 CHAIRMAN EWASUTYN: I have a motion by
3 Ken Mennerich. I have a second by Joe Profaci.
4 Any further discussion?
5 (No response.)
6 CHAIRMAN EWASUTYN: I'll move for a
7 roll call vote starting with Frank Galli.
8 MR. GALLI: Aye.
9 MR. BROWNE: Aye.
10 MR. MENNERICH: Aye.
11 MR. PROFACI: Aye.
12 CHAIRMAN EWASUTYN: Myself. So
13 carried.
14 You are the owner; correct?
15 MR. BERLIN: Yes.
16 CHAIRMAN EWASUTYN: While we have the
17 opportunity of having you here tonight, let's
18 discuss some of the outstanding issues that
19 you'll have to still address in your site plan.
20 Pat Hines.
21 MR. HINES: Our comments of, I think it
22 was the last meeting in December, I don't have it
23 in front of me right now, there were outstanding
24 comments regarding the layout of the water lines,
25 the details for the water lines, the thrust

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blocks. I know your engineer has them. They have yet to be addressed.

Also I received a phone call from one of the neighboring parcels, their representative. They had a concern regarding the drainage. I received a letter from them. The Board has not received theirs, I gave them a copy. There's an issue regarding some potential --

CHAIRMAN EWASUTYN: I'll give you a copy.

MR. HINES: -- regarding some ponding on the site. The neighbor's representative contacted myself and your engineer and we will be taking a look at that to make sure it's been addressed on the plans. I haven't seen it in the field. I don't know if it's an issue or not. I suggested at work session tomorrow might be a good day to take a peek at that. If I can arrange it I will to see what kind of drainage impacts there are.

MR. WIEBOLDT: You're talking about current ponding on the site?

MR. HINES: I haven't seen it but the neighbors seem to think it's impacting their

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2 property, the Sylcox property. You have the
3 letter I received. I just wanted to let you know
4 I'm going to take a look at that. I explained to
5 them the drainage is all going out to the State
6 right-of-way. He apparently called your engineer
7 also and talked with him.

8 MR. BERLIN: Their concern is after
9 construction or --

10 MR. HINES: Their concern is the
11 existing ponding and where the water is going to
12 go after construction. Correct.

13 CHAIRMAN EWASUTYN: Bryant Cocks,
14 outstanding items for the site plan we could
15 discuss at this point.

16 MR. COCKS: Yes. As we've talked about
17 with multiple applications tonight, the applicant
18 provided 24 feet for the drive access. That's
19 going to have to be increased to 26. That's
20 going to need to be addressed.

21 The engineer's and surveyor's seals and
22 signatures must be on the plans for approval.

23 We did get a letter from Jim Osborne
24 indicating that this lot is in the crossroads
25 sewer district.

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We're still going to need approval from the City of Newburgh for a sewer flow acceptance letter.

We still need DOT approval.

You're going to need to submit landscaping and stormwater cost estimates for approval. That was all.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: Most of my comments were addressed. There was one comment that was brought up at the last meeting to show where the stonewall that runs along the Pilot site is.

MR. BERLIN: You wanted it to be lined up with Pilot.

MS. ARENT: Yes. If the engineer can show on the drawings where the Pilot wall is and adjust your wall accordingly, that would be great.

I have notes here my lighting comments were not addressed.

MR. BERLIN: I spoke to the engineer afterwards and he said that -- he couldn't make it to this meeting but he said all the comments will be addressed -- would have been addressed

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after this meeting. Not a problem.

MS. ARENT: I was just asking for cutoffs to be placed on the fixtures so no lights spilled onto the adjacent properties. If you can look at the fixture and see if it matches with the architecture. Maybe the architect might want to consult with the engineer.

MR. WIEBOLDT: It would be a lousy decision. We're pending tonight's acceptance so we can make it all blend together.

MS. ARENT: Thank you.

CHAIRMAN EWASUTYN: Jerry, do you have anything to add to this?

MR. CANFIELD: Yes. Also I did fax a copy of our comments to your engineer, Lanc & Tully.

Bryant mentioned the access road.

The building is required by local law, Town of Newburgh, Chapter 107 to be sprinklered. It's a more stringent law than New York State. I know Dave and I have some experience with the sprinkler law and the first Mid-Valley Mall renovations.

Also like Pat had said as well, the

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questions on the water line coming in. The proposed plan calls for several individual taps. You might want to check with the Town of Newburgh water department and town engineer to come into compliance with the Town's requirements.

MR. WIEBOLDT: Right. The next step we have is when we start designing the sprinkler service the size of the water mains. Obviously three-quarter water service is not going to --

MR. CANFIELD: Right. That's it.

CHAIRMAN EWASUTYN: Questions?

(No response.)

CHAIRMAN EWASUTYN: Thank you.

MR. BERLIN: Thank you.

MR. WIEBOLDT: Thank you.

(Time noted: 8:30 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: April 10, 2008

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

----- X
In the Matter of

WOODFIELD MANOR PHASE II

Brewer Road
Section 43; Block 1; Lot 24.4
R-2 Zone

----- X

34-LOT SUBDIVISION - AMENDED RESOLUTION

Date: April 3, 2008
Time: 8:30 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: JOHN CAPPELLO & THOMAS OLLEY

----- 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 is Woodfield Manor Phase II. It's a 34-lot subdivision, it's an amended resolution and it's being represented by John Cappello and also Tom Olley.

MR. CAPPELLO: I'm going to let Tom do most of the talking. This project received final approval from the Board back in October. There was only one issue on one of the conditions. There are I think eight lots that were listed to be built on slab with no basement.

I know Tom had spoken with I believe Ed Garling's office since then to explain why footing drains would accommodate those and have basements. So that was the only issue on the condition. I know there was a memo from Mr. Garling. I don't know if Pat has spoken yet but since it's an engineering issue I will step aside.

MR. OLLEY: As John said, there was one condition regarding placing a note on the plans on eight lots that there be only slab-on-grade construction allowed, and the way that Eustance & Horowitz handled that issue was to actually place

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2 on those eight lots and on other lots a lowest
3 basement floor elevation, which was a little bit
4 different way of handling it. Our concern was
5 really one of practicality. Since we don't have
6 home designs for each one of these and they will
7 be offered as custom-built lots, we really
8 couldn't say well this house is going to be a
9 slab on grade. What we were concerned about is
10 that if somebody wanted to do enough earth work
11 on the site, do enough filling to half bury a
12 foundation or, you know, put in six or seven feet
13 of fill and have a fully buried foundation, some
14 of those lots it makes sense, some of is a half
15 bury situation, some will be likely built as slab
16 on grade. We were just concerned about having
17 that restriction and putting the building
18 department or Jerry's office in a situation of
19 trying to make a determination if a walk-out
20 basement is indeed a slab-on-grade situation or
21 if you couldn't have that kind of situation. So
22 with the lowest basement floor elevations we
23 felt, you know, that is the lowest elevation that
24 is possible on any of these lots. They could be
25 a little bit higher. Some of them, as Pat

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2 pointed out in his review letter, would require a
3 fair amount of fill around them. Some of the
4 lots even have elevations that would come out at
5 an elevation somewhere off a basement wall if
6 that were the case, but that's fairly common. If
7 need be, we also have the option in the building
8 design that if a footing drain can't be achieved
9 by gravity it can be brought in to a sump pump.
10 It's certainly not the best situation but it's
11 permitted under the building code.

12 CHAIRMAN EWASUTYN: Jerry, is that
13 true?

14 MR. CANFIELD: I have to double check
15 that. I'm not certain, Tom, that that's
16 accurate.

17 MR. OLLEY: I checked it out with the
18 architect again today. I think it's 405 or 406
19 in the residential code. It talks about the
20 foundation drainage. It does say it has to grade
21 to -- it has to discharge to daylight but it
22 doesn't restrict using a pump. So it's a --

23 MR. CANFIELD: Does it address back-up
24 power?

25 MR. OLLEY: No. No.

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MR. HINES: That's why fire departments have pumps.

MR. OLLEY: I did want to point out that all of the basement floor elevations that have been here, that are shown on the plan, none of them are at an elevation -- at the wetland elevation. They're like three feet or more higher generally. Even that wetland boundary isn't necessarily wet at the edge of it. It has to do with the soil types and the --

CHAIRMAN EWASUTYN: Vegetation.

MR. OLLEY: -- vegetation. Thank you. So we don't have a situation where we're really going to have any backup of water from the surrounding areas to that basement floor elevation.

Just again as I said, we were just leery of having that restriction that it could only be slab on grade and what a slab on grade means. It's pretty clear to me and I would have a difficult time with eliminating that possibility of having a walk-out basement.

CHAIRMAN EWASUTYN: Pat, what is your recommendation to the Planning Board?

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MR. HINES: I had the ability to talk to the Board at work session and describe some of my concerns. I looked at each of the lots that were subject to the note. Some of them I see no problem with, other ones are very close to existing grades. I don't even know if they work with the existing basement floor elevations having drains.

What we talked about in work session was to possibly bring you in to a technical work session with those lots that are in question and show a grading plan. I described the issue to the Board similar to what you described, some of the houses as proposed would have to be significantly filled in order to get a basement. The concern here is that because the project is served by Town water, municipal water, the lots are of a size where significant filling may impact the septic area. The suggestion was possibly coming up with a couple of grading plans, and it's probably only four or five of the lots that I saw that would potentially be a problem. I think the note that's on the plans would have to be revised where it says, I think

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it's BE or basement elevation there, that there's a little note there that describes what this is and it says this area will be easily served --

MR. OLLEY: Easily served basement to sewage disposal system.

MR. HINES: By changing those elevations we may have an issue with that note too. That might have to come off on those lots.

MR. OLLEY: One of the things we're trying not to do is --

MR. HINES: I understand.

CHAIRMAN EWASUTYN: Go back to the Health Department.

MR. OLLEY: Exactly.

CHAIRMAN EWASUTYN: Then I'll move for a motion to set this up for a work session to discuss these technical items and get a recommendation back from our consultants.

MR. HINES: I went through each of them and checked them and I know which lots I'm still concerned about.

MR. DONNELLY: There is a timing issue here. That is the conditional final approval was granted on June 21, 2007. I don't know when it

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was entered in the office of the town clerk.
Assuming it was some weeks after that, the
360 days is going to come up somewhere in mid to
late June.

CHAIRMAN EWASUTYN: Okay.

MR. DONNELLY: That just means that if
they get a new approval I think they would end up
with a new 360 days. If this isn't resolved and
back before you before the expiration, they're
going to fall off the gang plank. We have to
keep that in mind.

MR. OLLEY: When can we come in?
Really for us as a technical issue, there's not a
lot of work to be prepared for that.

MR. COCKS: The 22nd.

MR. HINES: I think it's a couple
grading plans on a couple lots.

CHAIRMAN EWASUTYN: What's the date,
Bryant?

MR. COCKS: The 22nd.

MR. OLLEY: Of April?

CHAIRMAN EWASUTYN: Of April.

MR. OLLEY: We can be on that -- we
would be ready and come right back to the Board.

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CHAIRMAN EWASUTYN: Okay.

MR. HINES: How much change to the plans -- that note obviously is going to come off.

MR. OLLEY: These were the plans before.

MR. HINES: I'm just making sure I don't send you back to the Health Department inadvertently, which is not my intent by any means. I wouldn't subject anyone to that. We'll talk at the work session.

CHAIRMAN EWASUTYN: I'm going to move to refer this to a Planning Board work session for the 22nd of April.

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.

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

I'll also move to set this up for our
meeting of the 3rd of May; is it, Dina?

MS. HAINES: 1st.

CHAIRMAN EWASUTYN: For the 1st of May.

MR. OLLEY: Thank you very much.

MR. HINES: Give me a call.

(Time noted: 8:40 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: April 10, 2008

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

----- X
In the Matter of

LANDS OF PINE TREE REALTY
(2008-10)
615 Route 9W
Section 20; Block 2; Lot 2
B Zone

----- X

CONCEPTUAL SITE PLAN

Date: April 3, 2008
Time: 8:40 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: JAMES RAAB

----- X

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

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CHAIRMAN EWASUTYN: The last item of business this evening is the lands of Pine Tree Realty. It's a conceptual site plan located on Route 9W in a B Zone. It's being represented by Jim Raab.

MR. RAAB: This is a little over a 5-acre parcel located on 9W in the location that was formally occupied by the Pine Tree Inn or, for the younger crowd here, the Palms. At any rate, that's been demolished down. What we propose to do here is to have a two-story indoor self-storage building, 36,000 square feet, 18,000 square foot per floor, and a one-story indoor storage building of 9,750 square feet.

One of the reasons why we ended up with this use on the site is that we have horrible soils there. They're just horrible. We were thinking about doing a commercial retail/office strip mall but there's a lot of things that got us away from there. One was the soil, two is the traffic, okay. Until such time as they do something with 9W in that section, it would be a horrible place to try to put a strip mall in. The owners of the property decided on doing this.

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We pulled the buildings back as far as where the old building used to be, and we may move it back even further.

I've had some conversations with Karen and she's concerned about the trees that are there, to save the Norway Spruces. If we can save the Norway Spruces we're going to do that. Right now, to give you just a rough idea, the Norway Spruces are right in the front of the building. We'd have to pull the building back a little bit to get the driveway in. The main thing about this is we want to keep this all in the middle of the site, plenty of green on each boundary. We'll pull the underground detention, that's not a problem. You know, I'll work diligently with Karen to put whatever she wants as far as planting in here. Again, the stonewall that will be bordering where the -- there's an elevation differential between the front lawn and where the restaurant used to be and then another elevation difference to the back here.

What we're going to do is have a stone retaining wall. It won't really be a retaining wall. It will be more look than retaining.

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We'll try to work it all together and conform with all the guidelines that the Town has laid out for sites like this.

We need to go to the ZBA to see if we can get this use approved.

The Town Board at this present time is discussing including indoor self-storage in a B Zone but we don't know how quickly that's going to happen. My clients would prefer to at least try the ZBA. If it doesn't we can wait it out. Hopefully I can prove to the ZBA there's not a whole lot of uses without sewer here. There's not a whole lot of uses that you can use it for.

CHAIRMAN EWASUTYN: I'll turn the meeting to Mike Donnelly at this time. Mike, there's a question as to the fact --

MR. DONNELLY: Oh, the variance issue. When an applicant comes to a planning board on a site plan and it's apparent that the bulk table is not met and an area variance is required, the planning board has the authority to refer that applicant to the zoning board for consideration of a variance without the need of that applicant obtaining a denial from the building inspector

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2 and then appealing that. There's not a parallel
3 provision for a use variance, so you will have to
4 get some kind of denial letter from the code
5 compliance department to appeal to the ZBA. I
6 said it was still, I think, helpful for you to
7 come to this Board and have some level of review
8 as to at least conceptually what the issues are
9 so that you can factor that in to your decision.
10 MR. RAAB: Could you just explain the
11 use part. You can't -- the Planning Board can't
12 give me a use variance because --
13 MR. DONNELLY: The authority to refer
14 to the Zoning Board only exists for area
15 variances.
16 MR. RAAB: For a use variance it has to
17 be --
18 MR. DONNELLY: You just go to the
19 building department and say you want to conduct
20 this use and they'll give you a denial.
21 MR. RAAB: Do I have to fill out a
22 building permit application?
23 MR. DONNELLY: I don't know what they
24 require.
25 MR. CANFIELD: The process for Tilford

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Stiteler is to fill out just that, a building permit application. Of course he should recognize that it's not permitted in that zone and disapprove it. That triggers the Zoning Board process with a letter of disapproval and then a zoning --

MR. RAAB: I should sit down with Tilford and find out besides the building permit application what has to be submitted. We have no building plans per se.

MR. DONNELLY: Does he require a complete application with the fee?

MR. CANFIELD: I don't believe so. I don't believe so. That's a Zoning Board question, what they actually will accept. I think a plot plan and some visuals would suffice, but that's totally a Zoning Board call.

MR. RAAB: That I understand. I'm basically back to the building permit application because I've had -- when I do it with individual applicants, like with undersized lots and stuff like that, I've got to have at least some kind of house -- building plan, the floor plan along with the plot plan, to submit with the building

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permit. I'm just saying we don't have any building plans per say. We don't --

MR. CANFIELD: I would think, Jim, the same would apply here because conceptually it may be the same approach, however it's not -- I'm not at liberty to tell you what they would or would not accept. You may want to follow up with Betty in the zoning department for what they will require for this.

MR. RAAB: Okay. I will do that.

CHAIRMAN EWASUTYN: I guess there's no action we can take tonight.

MR. RAAB: Except for the referral for the area. Not even the area.

MR. DONNELLY: You need an area variance, too?

MR. RAAB: Height.

MR. DONNELLY: That can be done.

CHAIRMAN EWASUTYN: Actually you're showing, 40 feet is it?

MR. RAAB: Well, it will probably be -- I don't think it's going to be 40 feet but it's going to be more than 15.

CHAIRMAN EWASUTYN: I'll move for a

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motion to refer to the ZBA the Pine Tree Realty site plan for an area variance.

MR. GALLI: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second by Joe Profaci. 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.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

MR. RAAB: I hope to see you back in a couple months.

(Time noted: 8:47 p.m.)

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DATED: April 10, 2008

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

----- X

In the Matter of

LANDS OF ADAMO
(2004-03)

Request for a 180-day extension of final approval

----- X

BOARD BUSINESS

Date: April 3, 2008
Time: 8:47 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

MICHELLE L. CONERO
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CHAIRMAN EWASUTYN: Dina.

MS. HAINES: The first thing we have on Board business tonight is the Lands of Adamo. We received a letter from Ken Lytle dated March 18, 2008 requesting a 180-day extension of the final approval which was granted on November 15, 2007. The resolution was filed in the Town Clerk's office on December 12, 2007. The current approval expires on June 9, 2008 and a 180-day extension would be valid through December 6, 2008.

CHAIRMAN EWASUTYN: 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. 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.

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MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

(Time noted: 8:48 p.m.)

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the State of New York, do hereby certify
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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH PLANNING BOARD

----- X

In the Matter of

THE MARKET PLACE
(2007-35)

Circulation to the Orange County Planning Department

----- X

BOARD BUSINESS

Date: April 3, 2008
Time: 8:48 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

MICHELLE L. CONERO
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2 MS. HAINES: The next thing we have is
3 to circulate The Market Place to the Orange
4 County Planning Department under 239M.
5 CHAIRMAN EWASUTYN: That would be the
6 project that would be the subdivision.
7 MS. HAINES: The subdivision, yes.
8 CHAIRMAN EWASUTYN: I'll move for that
9 motion.
10 MR. GALLI: I'll move.
11 CHAIRMAN EWASUTYN: Okay. I have a
12 motion by Frank Galli.
13 MR. PROFACI: Second
14 CHAIRMAN EWASUTYN: A second by Joe
15 Profaci. Any discussion of the motion?
16 MR. MENNERICH: The fact that the ZBA
17 already approved this, does that matter?
18 MR. DONNELLY: They approved the
19 variance that will allow the subdivision, and I
20 think there may have been a referral once before.
21 In the abundance of caution --
22 MR. COCKS: Not for the subdivision.
23 MR. MENNERICH: The ZBA doesn't do
24 that.
25 MR. DONNELLY: They probably should

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have.

MR. COCKS: We also have to do it.

MR. DONNELLY: There is a case that says that once an application has been referred to the County Planning Department and the County Planning Department has declared it a matter of local concern, then it never needs to be sent again on minor amendments for a variance or subdivision depending upon which went first unless there's significantly -- significant changes in the plan. So I think everybody could take the position that no referral was required. I think in the abundance of caution though, given the number of lawsuits we have, it's probably a better practice at this point to send it to them again and ask for them to report it out one last time.

CHAIRMAN EWASUTYN: I have a motion by Frank. I have a second by Joe. Any further discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

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MR. BROWNE: Aye.
MR. MENNERICH: Aye.
MR. PROFACI: Aye.
CHAIRMAN EWASUTYN: Myself. So

carried.

(Time noted: 8:50 p.m.)

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

----- X
In the Matter of

HOTEL & COMMERCIAL BUILDING
(2006-15)

SEQRA Consistency Document

----- X

BOARD BUSINESS

Date: April 3, 2008
Time: 8:50 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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MS. HAINES: Next we have a discussion by Mike Donnelly regarding the Hotel & Commercial Building and their SEQRA consistency document.

MR. DONNELLY: You'll remember this was the combined hotel and the plumbing warehouse site. It was approved by you some time ago for a hotel and plumbing warehouse. The applicant then came back to you and applied to change the number of kitchen units in the hotel from something less than the 25 percent of the units allowed to all units to have kitchens. That required a referral to the Zoning Board of Appeals. When it got to the Zoning Board of Appeals I recognized, as did my partner Dave Donovan, that arguably there's a change in the complexion of the application that may require some further environmental review. Ken Wersted was then asked to do a report which he gave to you that said there's no change in the traffic impacts and we identified no others.

Consistent with what we did before and what the court upheld on the Mehr and Kane lawsuits, we think the best practice would be for you to issue a SEQRA consistency determination. That is a finding that there are no environmental

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2 impacts that were not already addressed in the
3 E.I.S. and covered by the Findings Statement, and
4 the Zoning Board is awaiting the issuance of that
5 so that they can finalize their action. Bryant
6 had prepared that document. I didn't bring my
7 copy but I assume it's been distributed to the
8 Members.

9 MR. COCKS: I actually didn't send it
10 over. I have it in my computer. It's all ready.

11 MR. DONNELLY: It says just what I
12 said, and that is we've evaluated the impacts
13 that might flow from the change to the full
14 kitchen hotel and that we identify no impacts
15 that were not covered by the existing E.I.S. and
16 addressed in the Findings Statement, and
17 therefore we issue a determination of
18 consistency. That is, that there is no need for
19 further environmental review in this matter.

20 MR. HINES: The building footprints
21 stayed the same size and the site improvements
22 are the same.

23 MR. DONNELLY: Everything is the same.
24 While I had thought there would be a change in
25 the traffic pattern, although we're well within

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the parameters of the E.I.S., Ken Wersted has said there's no significant changes in the traffic patterns. All of your other consultants feel there are no other environmental issues raised.

MR. MENNERICH: Is that true for sewage too?

MR. HINES: The sewage use is going to be on a room count.

CHAIRMAN EWASUTYN: Then I'll move for a motion to adopt the SEQRA consistency document for the Hotel & Commercial Building as discussed during the meeting by our Attorney, Mike Donnelly.

MR. MENNERICH: So moved.

MR. GALLI: Second.

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

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

Bryant, you'll make it a point of
e-mailing that document to our office.

MR. COCKS: Okay. It's already done.
I'll have it tomorrow.

(Time noted: 8:53 p.m.)

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DATED: April 10, 2008

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

----- X
In the Matter of

ZONING CHANGE
Proposed Local Law Amending Chapter 185 - Zoning
Code of the Town of Newburgh: Accessory Apartments

----- X

BOARD BUSINESS

Date: April 3, 2008
Time: 8:54 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI
ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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MS. HAINES: The Town is proposing an amendment to Chapter 185 entitled Zoning Code of the Town of Newburgh: Accessory Apartments.

CHAIRMAN EWASUTYN: I think at this point, Bryant, you'll have to find the opportunity to review that and get back to us with an outline that we can refer on for our meeting of the 17th of April.

MR. COCKS: Okay.

CHAIRMAN EWASUTYN: Any questions from the Board? Did anyone have a chance to look at it? It seems pretty reasonable. 450 minimum, 700 being the largest.

MR. BROWNE: Was that the only change to the proposal, what was in that memo?

CHAIRMAN EWASUTYN: Yes.

MR. BROWNE: That's all? Everything else stays intact?

CHAIRMAN EWASUTYN: Yes. Owner occupied. They have to have engineering and make sure the septic could accommodate it.

MR. BROWNE: When the property is sold it goes away.

MR. MENNERICH: The building can't be

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older than five years old.

MR. HINES: That's a strange requirement, that the building can't be more than five years old.

MR. GALLI: I thought it was younger than five.

MR. MENNERICH: It was newer buildings.

MR. BROWNE: It's got to be more than five years old. Five years or older. I just barely qualified. Mine was built in '00.

CHAIRMAN EWASUTYN: I'm just wondering, can we agree that we agree with the proposed zoning change and have Bryant prepare a letter sending it off to them?

MR. DONNELLY: Sure. You've all had a chance to review it.

MR. BROWNE: It sounds like the only reason for doing this is to alleviate an extra step.

CHAIRMAN EWASUTYN: Jerry.

MR. CANFIELD: Basically that change is -- the building department had requested two things. Actually, they requested one thing and got two. Most importantly what the initial

1
2 request was for was a clearer definition of an
3 accessory apartment because frequently they run
4 into what is an accessory apartment. There was a
5 large degree of requests for adult parents that
6 want to come live with their children, they can't
7 keep their home up or whatever. The way our
8 Zoning Code was written, it really kind of didn't
9 really permit that without a long, lengthy
10 process. There were burdens being imposed and
11 then again there was another degree of rental
12 properties that were being created that were
13 slipping through the cracks. In any event, they
14 asked to have a clear cut definition of an
15 accessory apartment, something that's more
16 enforceable, which this amendment does provide.
17 What it does also is it alters the process in
18 obtaining an accessory apartment permit and no
19 longer requires the applicant to go to the Zoning
20 Board whereas before the process was that only
21 the Zoning Board could grant a special use permit
22 for an accessory apartment. So it kind of
23 changed that so the building department can
24 typically handle it.

25 MR. BROWNE: How did this clarify it

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more, Jerry? I didn't see that part. How did it clarify the definition?

MR. CANFIELD: The what part?

MR. BROWNE: How did this proposed law modify or clarify the definition?

MR. CANFIELD: What the definition was.

MR. BROWNE: I didn't see that part in there where it was clearer to me.

MR. CANFIELD: Well, they changed the sizes. There were requirements, limitations on sizes, a percentage of the dwelling. The explanation of that wasn't -- it was a little vague in many cases. Again, we were tried on size of what, size of the new house with an addition and now the total gross square footage, is it 25 -- the old code said it couldn't be 25 percent of the existing structure. It didn't say existing. That was the lacking word. So the applicants would present this in a fashion that they would have a structure, they'll put an addition on it and then say 25 percent of the total area, which of course allows the apartment to be larger.

MR. HINES: 25 percent on the addition.

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MR. CANFIELD: It was construed that the original intent of the Code was 25 percent of the current structure, okay. Again to limit the size of an accessory apartment. In some cases the applications were for twice the size of the house. It was applied for as it would be an accessory apartment for my grandmother with six bedrooms.

Anyway, the definition and an explanation of that, how it's calculated, cleared it up. It did not change anything. Where it affects the Planning Board is if you remember a few years back --

CHAIRMAN EWASUTYN: I remember.

MR. CANFIELD: -- we tightened up the regulations on two-family, then it became a difficult task to define what's the difference between a single-family dwelling with an accessory apartment or is it a two-family. Of course two-family has a different set of criteria, ARB and all of that. That has not been changed at all. Actually, this definition allows a much clearer way to interpret so the applicant can't kind of, you know, hoodwink us so to speak.

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If it is a two-family it is two-family and they need to go through the necessary steps. So it just allows you to further qualify what the applicant is intending to do with it. Again, to regulate rental property is what it is.

MR. BROWNE: With that John, do you think we need to go any further with it?

CHAIRMAN EWASUTYN: No. I think it's pretty simple. That's why if everyone agrees Bryant will send a letter saying that the Board is in agreement with the proposed zoning change.

MR. COCKS: Okay.

(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

COMPARISON OF NEW APPLICATIONS
March 2007 - March 2008

----- X

BOARD BUSINESS

Date: April 3, 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
CLIFFORD C. BROWNE
KENNETH MENNERICH
JOSEPH E. PROFACI

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

----- X

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CHAIRMAN EWASUTYN: Dina.

MS. HAINES: The last thing is a comparison of the new applications between March 2007 and March 2008, as well as total applications between 2007 and 2008 year to date, as well as the application fees and a comparison of that as well.

CHAIRMAN EWASUTYN: Thank you, Dina, for that. Any questions on that?

(No response.)

(Time noted: 9:01 p.m.)

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

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In the Matter of

EXETER LITIGATION
(2002-26)

Executive Session

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BOARD BUSINESS

Date: April 3, 2008
Time: 9:01 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT
GERALD CANFIELD

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MICHELLE L. CONERO
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MR. DONNELLY: I received a call from Mark Taylor in the latter part of the afternoon asking me to report something to you in executive session regarding the Exeter litigation. That would require us to go into executive session.

CHAIRMAN EWASUTYN: I'll move for a motion to enter into executive session to discuss the Exeter litigation.

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 move for a roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

(Time noted: 9:01 p.m.)

(Time resumed: 9:09 p.m.)

CHAIRMAN EWASUTYN: I had a motion from Frank Galli and a second from Ken Mennerich to

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2 enter out of executive session. No decision was
3 made.

4 Any other questions from the Board
5 Members before I move for a motion to close the
6 Planning Board meeting of April 3rd?

7 (No response.)

8 CHAIRMAN EWASUTYN: I'll move for a
9 motion to close the Planning Board meeting of
10 April 3rd.

11 MR. GALLI: So moved.

12 MR. PROFACI: Second.

13 CHAIRMAN EWASUTYN: I have a motion by
14 Frank Galli and a second by Joe Profaci. Roll
15 call vote starting with Frank Galli.

16 MR. GALLI: Aye.

17 MR. BROWNE: Aye.

18 MR. MENNERICH: Aye.

19 MR. PROFACI: Aye.

20 CHAIRMAN EWASUTYN: And myself. So
21 carried.

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23 (Time noted: 9:10 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.

DATED: April 10, 2008

