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

----- X
In the Matter of

NOAH ESTATES
(2007-27)
Rock Cut Road
Section 86; Block 1; Lot 95
R-2 Zone

----- X

PUBLIC HEARING
FIVE-LOT SUBDIVISION

Date: December 13, 2007
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: ROBYN SCOPTEUOLO
----- X

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

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CHAIRMAN EWASUTYN: Good evening, ladies and gentlemen. I would like to welcome you to the Town of Newburgh Planning Board meeting of the 13th of December 2007. Thank you all for coming out this evening.

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.

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

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

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

MR. COCKS: Bryant Cocks, Planning Consultant.

MS. ARENT: Karen Arent, Landscape

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Architectural Consultant.

CHAIRMAN EWASUTYN: Thank you.

At this time I would like to turn the meeting over to Joe Profaci.

MR. PROFACI: Please join us in saluting the flag.

(Pledge of Allegiance.)

MR. PROFACI: Please turn off all of your cell phones. Thank you.

CHAIRMAN EWASUTYN: The first item this evening is Noah Estates. It's a public hearing for a five-lot subdivision located on Rock Cut Road, it's zoned R-2 and it's being represented by Robyn Scopteuolo.

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

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a public hearing pursuant to Section 276 of the Town Law on the application of Noah Estates for a five-lot subdivision on premises Rock Cut Road in the Town of Newburgh, designated on Town tax map

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as Section 86; Block 1; Lot 95. Said hearing will be held on the 13th day of December at the Town Hall Meeting Room, 1496 Route 300, Newburgh, New York at 7 p.m. at which time all interested persons will be given an opportunity to be heard. By order of the Town of Newburgh Planning Board. John P. Ewasutyn, Chairman, Planning Board Town of Newburgh. Dated November 6, 2007."

CHAIRMAN EWASUTYN: Thank you.
Frank Galli.

MR. GALLI: The notice of hearing was published in The Sentinel on December 7th and in The Mid-Hudson Times on December 5th. The applicant's representative sent out twenty-one registered letters, thirteen were returned. The publications and mailings are all in order.

CHAIRMAN EWASUTYN: Thank you.

Robyn, would you come up to the easel and make your presentation. Do you have your map with you?

MS. SCOPTEUOLO: No.

CHAIRMAN EWASUTYN: Pat, do you have a map?

MS. SCOPTEUOLO: It's a subdivision for

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-- a five-lot subdivision. One house is currently existing on what would be designated lot 1. There is -- I believe all comments have been addressed by the Town Planning Board's consultants.

It would remain a private road.
Are there any questions from the Board?

CHAIRMAN EWASUTYN: First I'd like to have Mike Donnelly, for the audience, give you the purpose and the meaning of a public hearing and then we'll ask for questions.

MR. DONNELLY: There are two public hearings on this evening, both of them are subdivisions. Subdivisions are proposals by land owners to divide their land into lots either for the purpose of residences or buildings. In the case of both here this evening they are residential subdivisions. The purpose of the hearing is to give the public an opportunity to be heard before the Planning Board takes action on the project. The idea is for you, the members of the public who wish to speak, to bring to the attention of the Planning Board issues that the Planning Board may not have recognized yet or may

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2 not have recognized with the assistance of their
3 consultants. When the applicant is finished with
4 the presentation the Chairman will ask those who
5 wish to speak to raise their hand. When you're
6 recognized I'd ask you to come forward so all can
7 hear you, tell us your name, your first name and
8 last name, spell it for us so our Stenographer
9 gets it down correctly, and tell us where you
10 live so we know the perspective you bring to bear
11 on the matter. If you have questions we would
12 ask that you put them to the Board and the
13 Chairman will decide whether it's easiest for the
14 applicant's representative or for the consultants
15 to answer that question.

16 CHAIRMAN EWASUTYN: Thank you.
17 Is there anyone here this evening who
18 has any questions or comments on the five-lot
19 subdivision for Noah estates, would you please
20 raise your hand and give your name and your
21 address.

22 (No response.)

23 CHAIRMAN EWASUTYN: Okay. At this
24 point I'll turn to the Planning Board Members if
25 they have any questions or comments. Frank

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Galli?

MR. GALLI: No additional comment on

it.

MR. BROWNE: No.

MR. MENNERICH: No questions.

MR. PROFACI: No questions.

CHAIRMAN EWASUTYN: I'll turn to our
consultants. Pat Hines?

MR. HINES: Our previous comments have
been addressed. We previously commented on the
need for the topography to be added to the plans.

Stormwater management has been
provided. Water quality swales, that will need
to be incorporated into the private road access
and maintenance agreement.

The DEC wetlands boundary has been
received.

The septic systems and wells meet the
required setbacks and design standards.

We recently received a sign off from
the Orange County Department of Public Works for
the location and access of the private road.

All of our outstanding comments were
addressed.

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CHAIRMAN EWASUTYN: Bryant Cocks,
Planning Consultant?

MR. COCKS: Along with the Department
of Public Works we also received an approval from
the Orange County Planning Department on
September 27th. That was all the issues we had.

CHAIRMAN EWASUTYN: Karen Arent,
Landscape Architect?

MS. ARENT: I still have some
outstanding comments from a letter dated
September 18th, the latest revised plans I have
and Bryant has are April 2007, but they're minor.
It's the street trees that are supposed to be
shown. I know we spoke about it.

MS. SCOPTEUOLO: Right.

MS. ARENT: Perhaps I never got the
plan. We just need to get the plan to show the
street trees and buffer along Rock Cut Road.

MS. SCOPTEUOLO: I had dropped off
several sets months ago.

MS. ARENT: Bryant and I only have
plans that are April 10th.

MS. SCOPTEUOLO: I --

MS. ARENT: Maybe I could look at Pat's

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plans.

MS. SCOPTEUOLO: I originally thought I was supposed to drop them all off to Bryant at Garling and then I brought them in to Dina, I guess she was distributing them.

MS. ARENT: I will just look at them and make sure.

We'll need a landscape cost estimate.

CHAIRMAN EWASUTYN: We distribute in the office. It's internally in the office. It's your responsibility to distribute to each and every individual.

MS. SCOPTEUOLO: Now I know.

CHAIRMAN EWASUTYN: Okay.

MS. ARENT: The street trees I see are shown and the buffer is shown. We just need a landscape cost estimate.

CHAIRMAN EWASUTYN: You'll have to supply a landscape cost estimate.

MS. SCOPTEUOLO: Okay.

MS. ARENT: It's \$330 a tree. Figure that up and report it to the Town.

MS. SCOPTEUOLO: I should forward one copy to you and one copy to the Town?

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MS. ARENT: Yes.

MS. SCOPTEUOLO: Okay.

CHAIRMAN EWASUTYN: Any additional
comments from the public?
(No response.)

CHAIRMAN EWASUTYN: Before I move for a
motion to close the public hearing tonight for
Noah Estates, I'd like to allow for a ten-day
written comment period to end on December 24th at
4:30 in the afternoon. That's because of the
snowstorm, there may have been public who wanted
to attend. If we do receive any calls or
questions I would like to acknowledge that in
written form so we can respond to it.

MR. GALLI: What was the date again,
John?

CHAIRMAN EWASUTYN: December 24th.
We'll have it closing at 4:30 in the afternoon
for written comments.

I would move to close the public
hearing for the five-lot subdivision for Noah
Estates subject to a written comment period
ending on the 24th of December at 4:30 in the
afternoon.

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MR. MENNERICH: So moved.

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.

Mike Donnelly, would you give us conditions for approval, please?

MR. DONNELLY: I will. I assume you won't take action then until the public comment period is over.

The resolution should contain the following conditions: First, the receipt of a sign-off letter from Karen indicating that the outstanding items have been resolved to her satisfaction. The plans that are to be signed

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2 must show the street trees. That's obviously one
3 of the issues she raised. I don't know but I
4 think the Town Board will have to approve the
5 road name if they have not already. Correct?
6 CHAIRMAN EWASUTYN: Yes.
7 MR. DONNELLY: A private roadway
8 easement and maintenance agreement with provision
9 for drainage will have to be submitted and
10 approved by my office before the plans can be
11 signed. The standard condition regarding
12 clearing limits in the field with fencing. A
13 landscape security fee.
14 Does this need a stormwater security
15 fee?
16 MR. HINES: Yes. It will be part of
17 the private road, two percent, two-and-a-half
18 percent.
19 MR. DONNELLY: It won't be a separate
20 one, it will be part of the private roadway?
21 MR. HINES: Correct.
22 MR. DONNELLY: A security fee then.
23 The payment of fees in lieu of parklands.
24 CHAIRMAN EWASUTYN: Thank you. What
25 the Board will do is on January 3rd we'll take

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this under Board business subject to these conditions and also waiting for the written comment period to act on it.

MS. SCOPEUOLO: Okay. Thank you.

CHAIRMAN EWASUTYN: You're welcome.

(Time noted: 7:10 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: December 29, 2007

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

----- X
In the Matter of

LANDS OF SUMMER KIM PHASE II AT LONGVIEW FARMS
(2006-39)
End of Barbara Drive
Section 20; Block 1; Lots 1 & 3.35
AR Zone

----- X

PUBLIC HEARING
TWENTY-SIX LOT SUBDIVISION & SIX LOT LINE CHANGES

Date: December 13, 2007
Time: 7:10 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: HAMILTON STAPLES
----- X

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

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CHAIRMAN EWASUTYN: The following item of business this evening is the Lands of Summer Kim Phase II at Longview Farms. It's a public hearing for a twenty-six lot subdivision and six lot line changes. It's located on the end of Barbara Drive in an AR Zone. It's being represented by Ham Staples.

Mr. Mennerich, would you read the notice of hearing.

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a public hearing pursuant to Section 276 of the Town Law on the application of lands of Summer Kim Phase II at Longview Farms for a twenty-six lot subdivision and six lot line changes on premises end of Barbara Drive in the Town of Newburgh, designated on Town tax map as Section 20; Block 1; Lot 1 and 3.35. Said hearing will be held on the 13th day of December at the Town Hall Meeting Room, 1496 Route 300, Newburgh, New York at 7 p.m. at which time all interested persons will be given an opportunity to be heard.

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By order of the Town of Newburgh Planning Board.
John P. Ewasutyn, Chairman, Planning Board Town
of Newburgh. Dated November 6, 2007."

CHAIRMAN EWASUTYN: Thank you.
Frank Galli.

MR. GALLI: The notice of hearing was
published in The Sentinel on December 7th and in
The Mid-Hudson Times on December 5th. The
applicant's representative sent out seven
registered letters, five of them were returned.
The publications and mailings are all in order.

CHAIRMAN EWASUTYN: Thank you.
Mr. Staples.

MR. STAPLES: Good evening, Mr.
Chairman, Members of the Board and public and
consultants. Hamilton Staples is my name,
project manager for the subdivision and land
owner, Summer Kim Corp. We're also represented
here this evening by the project engineering
consultant, Tom DePuy from T.M. DePuy
Engineering, P.C. The landowner is also
represented by counsel of the law firm of
Whiteman, Osterman & Hanna, L.L.P. with an
address of 99 Washington Avenue, Albany, New

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York. The Whiteman & Osterman firm could not make it this evening due to the inclement weather.

This project was initially named Summer Kim which the new subdivision reflects Summer Kim Phase II at Longview Farm. The location is on Lattintown Road and Holmes Road in the Town of Newburgh. The total project consists of twenty-six new lots, a total of thirty lots including the four lots of the minor subdivision. It also has six lot line changes which are taking place within the bounds of the subdivision.

The initial application was filed on July 19, 2006 to the Town of Newburgh Planning Board. The Town took lead agency status as of September 21, 2006. Currently the SEQRA standing of the project is a type I action being in excess of twelve lots within the County agricultural district. The project was issued a negative declaration by the Town of Newburgh Planning Board on December -- excuse me, November 1, 2007.

The project is currently located in an AR Zone with individual wells and septic systems for waste and water provision for the individual

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lots.

The project was submitted through the Town of Newburgh Planning Board to review by the New York State DEC, New York State Ag & Markets, the Town of Newburgh Town Board, the Town of Newburgh Highway Department, Orange County Planning Department, and will ultimately need final approval from the Orange County Health Department.

The plat has been reviewed from the initial application date of September -- excuse me, July 19, 2006 and has been modified into its present state of twenty-six new lots with the lot line changes based on recommendations from the Town Consultants and the Planning Board, and after several reviews pursuant to Planning Board meetings.

The project engineer has recommended -- T.M. DePuy Engineering has recommended a soil management plan consistent with the soil management plan on the Palmerone subdivision, Hickory Shadow and Rocky Heights. That soil management plan would be implemented to alleviate any ag soil issues from residual pesticides

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accessory from the farming operations as the property's prior use.

The project has been approved by the Town Board for a drainage district which would be cohesive for all the adjoining projects which would be Summer Kim at Longview Farm, Palmerone and Taylor's Way, Hickory Shadow and Rocky Heights. So the project has been approved and a drainage district for all that conclusive property.

The road names as depicted on the subdivision with three roads, there would be an extension of the existing Barbara Drive off Holmes Road, that's an approved Town Board road name, Dara Drive which is an approved road name at this point, and Summer Drive accessing off of Holmes Road continuing to the Palmerone subdivision, to Harcourt-Cosman Drive which then has access out to Lattintown Road. That is also an approved Town Board road name.

At this point in time we turn it back to the Planning Board for their consideration.

CHAIRMAN EWASUTYN: At this point I would like to open the meeting for comment. If

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you would give your name and address.

MR. GABA: Is there a microphone? No?

MR. DONNELLY: There was but it didn't work.

MR. HINES: It was only for show.

MR. GABA: My name is Stephen Gaba, I'm an attorney in New Windsor, New York and I represent Joe Palmerone, who is the adjoining property owner to the north, and his corporation, Taylor's Way, L.L.C. The problem that we have with this subdivision, I believe I've written to the Board before about this, and I think what the Board should be aware about is that we have an easement. It was in the Palmerone/Hickory Shadow subdivision.

Let me see if I can find it on the map. It runs right along from our property. This lot here is Joe's house.

MR. HINES: Can you turn that to the Board a little bit?

MR. GABA: Sure. This lot here is Joe's house. This lot here is his tenant lot. This line which runs, you can kind of see it along the boundary line, is a driveway. The

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driveway is a private road called Taylor's Way.
It runs out to Lattintown.

Now, when the Palmerone/Hickory Shadow subdivision was approved the Board required as a condition of that that the easement be taken away from us property wise, we could no longer be owners of it, and given over to adjoining property owners, and that we get in return an easement over it and a road maintenance agreement which was to remain in place until that road that you see running north/south there, it used to be called Dara Drive, now I guess it's going to be Summer Lane, --

MR. STAPLES: Summer Drive.

MR. GABA: -- it was adopted -- it was made a Town highway. Well, it hasn't been made a Town highway and they haven't been maintaining Taylor's Way at all, as a result of which we're presently in litigation. In fact, we're going to be back in front of Judge McGuirk on the 10th of January and I think we're going to hash out what -- hopefully we're going to hash out a lot of the issues as to the existence of that roadway at that time.

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In the meantime what you have before you are subdivision plans. If you look at their grading plan, they're proposing substantial changes over our easement and in the neighborhood of our property. Those changes can not take place, in our opinion, at all but certainly as long as that litigation is ongoing.

I mean I don't know how much the Board has been made aware of these circumstances and what exactly is going on on this property but it's certainly something I think the Board should know, that these plans as drafted can not be approved, in our opinion, until that litigation has been resolved.

I would suggest, at least, that the Board would want to wait until after that January 10th court date to hold the public hearing to see what the upshot of all that is.

I have Joe Palmerone here with me. If the Board has any questions we would be happy to --

CHAIRMAN EWASUTYN: We received your correspondence. I made copies of that correspondence for all the Planning Board

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Members. At this time I'll ask Mr. Donnelly to address the Board.

MR. DONNELLY: Yes. You do have Mr. Gaba's letter. I received a letter today from Brad Allen from Whiteman, Osterman & Hanna, the attorney for the applicant, and it essentially confirms what Steve has told us, and that is that there is litigation and it has not been settled, although at one point it was tentatively settled but that is no longer the case, and that this subdivision as it's shown on the map would require the cooperation of the adjoining property owner before it could be built out.

My suggestion is obviously that we would never grant it final approval until that was either resolved with this layout or until there was some alternative design that was satisfactory to you. I think that it is possible now to include a resolution condition that would require that before final approval either the resolution of the issues involved in that litigation or a redesigned plan. Of course if it were the latter of those two alternatives, a redesigned plan, it may not be in substantial

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2 conformance to the preliminary plan and that
3 might require that it have another public hearing
4 and another go around. I think you were inclined
5 to allow additional public comment for a period
6 of time given the weather. I didn't notice in
7 the letters I had been given that it was back on
8 for January 10th. Given that that is not all
9 that long after the December 24th date and the
10 January 3rd date that you utilized in the last
11 project, perhaps there's some sense in continuing
12 the hearing, or at least allowing additional
13 public written comment to be received until after
14 the January 10th date and perhaps putting it on
15 for, if there's time on the agenda, the second
16 meeting in January which would enable us to know
17 the status. It might simplify any action you
18 take or it might better focus what changes might
19 need to be made to the plans and in the long run
20 save everyone time.

21 CHAIRMAN EWASUTYN: Okay. The meeting
22 after the 3rd of January would be the 17th of
23 January. So your recommendation would be to
24 consider --

25 MR. DONNELLY: Either keep the hearing

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open until that date or keep the comment period open in time for Mr. Gaba and others to report from the court how that turned out. It might be just as easy to announce this evening that the hearing would be continued until that evening, I don't think it would be particularly lengthy, and you could decide how you wanted to handle it from that point forward.

CHAIRMAN EWASUTYN: Any additional comments from the public?

(No response.)

CHAIRMAN EWASUTYN: Okay. I'll talk to Board Members. Frank Galli?

MR. GALLI: I think we ought to take the advice of the attorney and keep it open until the 17th meeting, this way it will play out in court and see what happens and save us time and aggravation.

CHAIRMAN EWASUTYN: Okay. Do you want to make a motion to that effect?

MR. GALLI: Do you want to listen to the rest of the Board Members first or do you want me to do it now?

MR. BROWNE: I agree with that.

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MR. MENNERICH: Yes.

MR. GALLI: I'll make a motion that we keep the hearing open until January 17th and at that time make our decision.

CHAIRMAN EWASUTYN: Okay. I have a motion from Frank Galli to continue the public hearing for the lands of Summer Kim Phase II at Longview Farms for a twenty-six lot subdivision and six lot line changes until the 17th of January. Do I have a second of that motion?

MR. MENNERICH: Second.

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

MR. MENNERICH: They don't have to re-notice; right?

MR. DONNELLY: No. You're announcing it will be that night at 7 p.m.

CHAIRMAN EWASUTYN: Any further discussion?

MR. BROWNE: John, are there any other issues we should bring up prior to that?

MR. HINES: -- we don't have any substantive changes since it was last here. There's still the issue of the bridge/culvert,

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whatever it is, I guess it's a culvert, and the acceptance of that. I know in the applicant's letter they said they're working with the highway superintendent and the town engineer on that dedication.

Some of the lot lines have been changed to reflect our previous comments.

The majority of our comments, even from when we scheduled the public hearing, have been addressed. There's a couple clean-up issues out there still. They're working their way to final.

They need to get to the Health Department before they're going to take any other steps towards approval because they need septic approvals on each of these lots.

MR. DONNELLY: Does this need DEC approval, SPDES or anything?

MR. HINES: They need SPDES but that's prior to them grading.

The stormwater management plan is in compliance with those regulations with the construction of the ponds.

CHAIRMAN EWASUTYN: Bryant, was it you who had a discussion as far as a separate

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approval?

MR. COCKS: Excuse me?

CHAIRMAN EWASUTYN: Did you have a comment about a separate approval for section II?

MR. COCKS: They're asking for section II to be completed so they could do the stormwater work and road construction. I don't know if the litigation is going to affect this.

MR. HINES: It would.

MR. COCKS: I think we're going to have to wait for that also.

MR. DONNELLY: It seems to me, given that it needs both preliminary and final, perhaps you should grant preliminary when the issues are resolved in the entire project and bring the phasing into the Board as part of the final. I think that makes more sense than trying to do it on a preliminary basis.

CHAIRMAN EWASUTYN: Okay. I have a motion on the table from Frank Galli. I have a second by Joe Profaci. I had a discussion by Cliff Browne. Is there any further discussion?

(No response.)

CHAIRMAN EWASUTYN: I'll move for a

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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.

MR. STAPLES: Thank you.

(Time noted: 7:25 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: December 29, 2007

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

----- X

In the Matter of

LAXMI PROPOSED DUNKIN DONUTS
(2006-23)

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

----- X

SITE PLAN

Date: December 13, 2007
Time: 7:25 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: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: JAMES GILLESPIE

----- X

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

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CHAIRMAN EWASUTYN: The following item of business this evening is Laxmi proposed Dunkin Donuts, a site plan located on Route 9W in a B Zone. It's being represented by Angelo Santabarbara.

MR. GILLESPIE: My name is Jim Gillespie from Bohler Engineering representing the applicant for this project at 5277 Route 9W.

Just to recap, the project is a demolition of the existing abandoned car wash to construct an approximate 2,000 square foot Dunkin Donuts facility.

Last time we were here we had a number of comments from the consultants. We were asked to meet with them for a consultant review. We did that, revised the plans, resubmitted and I believe we've addressed the bulk of those concerns.

We received some additional comments prior to this meeting. I think they're relatively minor in nature. A lot of them were some additional clarification notes and details that we were requested to add to the plans.

Some of the things that we had done per

1
2 those consultant comments were a substantial
3 increase in landscaping, some stonewall proposed
4 along the frontage similar to -- I'm sure you're
5 all familiar with the stonewalls on your road on
6 the way up here. We're going to propose
7 something very similar to that. One of the
8 comments was that it be increased to three feet
9 in height. We have no problem with that.

10 There were some comments about the
11 slope stabilization. We submitted some
12 information to Karen regarding that and she still
13 had some additional comments. We're certainly
14 willing to discuss that tonight.

15 We received a letter from DOT stating
16 that they've approved our application pending
17 receipt of a bond and some permit fees.

18 The DEC review is still underway.
19 Although they technically do not have any
20 comments, they requested some additional
21 information, one of which was a flow chart for
22 the system and some clarification as to the
23 discharge path that they ultimately will
24 discharge into the Hudson River which we're
25 putting together and will resubmit to them.

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Technically they're okay with what we're proposing.

We've submitted a zoning -- previous zoning resolution that granted approval for this Dunkin Donuts on this site which I believe Bryant has.

Other than that, we're certainly willing to discuss any other comments and any other questions you have here tonight.

CHAIRMAN EWASUTYN: Since you started out with Ken Mennerich -- Ken Wersted, he did call me to say that he wasn't coming down. He just wanted to remind you of his memo. Did you receive his memo?

MR. GILLESPIE: I received his memo. Apparently there are updates to the traffic and maintenance signage, which we can certainly incorporate into the plans.

CHAIRMAN EWASUTYN: He had mentioned earlier and he was wondering if you would consider the cross easements to the adjoining properties, both to the north and to the south, for potential for the corridor to be redeveloped. He had raised that to you last time and said it

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wasn't shown on the plans. What's your final response to that?

MR. GILLESPIE: I would like to -- if the applicant could have the right to -- prior to granting that cross easement -- he would certainly be willing to discuss it but he'd like the right to review what's going to be proposed on either one of these parcels before he would allow that. I mean there's the potential for some type of heavy traffic draw between him that that could create, you know, an undesirable traffic flow through his site. He certainly would be willing to discuss that but I think he would rather do it at the time that there was a proposal before this Board.

CHAIRMAN EWASUTYN: How would we work that in? After the fact there's nothing there to bind it.

MR. DONNELLY: I think you either do it or you don't. The applicant, if it were to his advantage, could always do it later and have a minor amendment to this site plan. I think the most you'd want to see then would be at least it's feasible in terms of grading and plantings,

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2 that we don't make it too impossible later if
3 it's, you know, to everyone's advantage. I don't
4 think we can compel them to allow others onto
5 their land. They're not rejecting it out of
6 hand. I think the best we can hope to do is make
7 provision for that connection in the future so we
8 don't make it impossible.

9 MR. HINES: I don't think he's limited
10 it. The grading and landscaping are minimal
11 there. There is no grading between the lots
12 there. It could work in the future.

13 CHAIRMAN EWASUTYN: Ken wants us to pay
14 attention his note number 4 which says the
15 stonewall and landscaping should not extend
16 higher than an elevation of 184 feet as to
17 interfere with the available sight lines looking
18 north along Route 9W. So where that wall is
19 proposed, make sure we keep that no higher than
20 184 feet.

21 MR. GILLESPIE: Yup.

22 CHAIRMAN EWASUTYN: Karen, you'll look
23 at that.

24 MS. ARENT: I'll coordinate that with
25 Ken.

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CHAIRMAN EWASUTYN: All right. At this time I'll turn the meeting over to our consultants. Pat Hines?

MR. HINES: My first comment had to do with updating the status of the DEC's review for the surface discharge from the sand filters. We just heard they're still reviewing that.

The project has had a substantial amount of slope stabilization details and planting added to the rear which was a concern earlier on. We're suggesting that that work be included in the landscaping bond so we can be sure that it gets accomplished. This isn't the only site that has an issue along that corridor but this is the only one before us right now, so we should address that.

We received DOT approval which addresses several of my comments.

I saw some clean-up items on the septic notes in several locations which I'm sure the applicant can do.

You're showing a four-inch water service. That's large for a building of this size.

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MR. GILLESPIE: Sprinkler system.

MR. HINES: It doesn't require sprinklering under our Code because it's less than 5,000 square feet. You certainly can sprinkle it. If that's the reason, that's fine.

MR. GILLESPIE: We've been told --

MR. HINES: That may be because of the use. There may be a Building Code issue.

MR. GILLESPIE: We've been told every commercial development in Newburgh requires a sprinkler.

MR. HINES: That's fine. If it's a sprinkler issue, that's fine. I would suggest you check with the water department, otherwise that's not an issue.

That's it.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: At the last meeting I made a comment about the size of the site lighting. They proposed twenty feet and they asked that -- there was nowhere in the Code that said what the height of it was. I don't think they have the design guidelines. The design guidelines state

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that they don't want to have above sixteen feet for the site lighting. If you need a copy of that --

MR. GILLESPIE: I've got it right here. We're going to thoroughly look at that. Certainly we can reduce the height of the lighting.

MR. COCKS: Okay. The second issue I had was with the proposed sign. They proposed a pylon internally illuminated sign and that also is not allowed in the design guidelines. If you can look at just maybe integrating that into the stonewall or making it a little smaller. It can't be illuminated.

MR. GILLESPIE: Okay.

MR. COCKS: In regards to the ZBA determination, that was actually for a previous application which was Krishna Doughnuts. It was for a clarification of the use, whether it was going to be an approved preparation shop or a fast food establishment. They said that it was fine to be a food preparation shop as long as there's no drive-through on it. They have no drive-through proposed for this but I just want

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to make sure with Mike that since it was for a different application that it would still hold.

MR. DONNELLY: The variance belongs to the land, not to the applicant. I would say if it's the same use with the same restrictions the variance is still in place.

MR. COCKS: My next comment was regarding the curbed area on the north side of the site. It looks like the landscaping was shown just on the site plan. Yeah, right there.

MR. GILLESPIE: Yup.

MR. COCKS: Okay. It wasn't labeled on the black and white site plan.

You addressed the issue of the stonewall height.

On the existing condition plan we're going to need a surveyor's seal and signature. On all other plans we'll need an engineer's seal and signature.

That was it.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

MS. ARENT: When we spoke at work session we were -- I was talking to you about a

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wall with a berm behind it but somehow a berm with a wall on top of it is shown on the plans.

MR. GILLESPIE: I misunderstood you I guess.

MS. ARENT: That needs to be addressed. We'll also have to work with Ken on determining exactly where. It looks like now that you've shortened this island there's not enough space to make the retaining wall behind the --

MR. GILLESPIE: We can just make the wall --

MS. ARENT: Make a straight free-standing wall. We'll have to check with Ken to see how far back it should be so it's out of sight lines.

MR. GILLESPIE: Okay.

MS. ARENT: I'll just double check your landscaping to make sure it's low.

Just get rid of all that berming in that island and make it flat for the free-standing wall.

MR. GILLESPIE: Sure.

MS. ARENT: Provide a detailed detail of that stonewall.

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A chain-link fence with gray slates is proposed for screening the dumpster. I think black slats would be better. In other projects we have requested masonry to be installed for the dumpster area because that remains in good condition and the chain-link seems to get damaged. That's something that we should discuss.

The concrete wall in the back of the site should appear as natural as possible, so select colors that appear natural.

I asked the question whether you have experience with the slope mat proposed because I've seen several applications with a slope mat where the mat has failed because a lot of times it's too dense and doesn't let the light through for the seeds to germinate. I know other engineers aren't spec'ing this because of the erosion that occurs underneath this mat. If you don't have actual experience with the mat that you're proposing, consider maybe even jute netting.

MR. GILLESPIE: This has a jute netting layer in it. Did you look at the --

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MS. ARENT: I looked at it. Well, maybe if you just review a cut -- like a sample to see if you think light will penetrate through this so the seeds will germinate underneath. I see that as a problem in the Wal-Mart up in Monticello and actually the Syracuse campus and several other projects. So that would be my only concern, especially since the slope is so tricky as it is. Just make sure that whatever we're proposing on there is the best possible product.

A landscape bond will be required for this.

I also looked at your lighting foot candles on your map. The guidelines also state they shouldn't be higher than five-foot candles. Just look at seeing if you can reduce that. Some of them are 6.9 and 7. That's it.

MR. GILLESPIE: We'll have to redo that for the 16-foot high. We'll have to redo that for the poles. We'll have to reduce that or reduce the foot candles.

CHAIRMAN EWASUTYN: Would you like to comment now on the trash enclosure as far as using materials similar to the building itself or

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do you want to continue on with the chain-link fence?

MR. GILLESPIE: Well, we prefer to keep the chain-link fence. We have no problem with changing the color.

CHAIRMAN EWASUTYN: We'll work with a black chain-link fence. Okay.

MS. ARENT: Instead just put the black slats.

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

MR. GALLI: No additional comment.

MR. BROWNE: Nothing more.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No.

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Mike?

MR. DONNELLY: I don't know if there are outstanding implementation issues, that any of them are environmental issues. If you issued a lead agency designation quite some time ago you may want to consider a negative declaration. You may also want to consider whether or not to hold a public hearing.

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2 CHAIRMAN EWASUTYN: I'll move for a
3 motion to declare a negative declaration for the
4 Laxmi proposed Dunkin Donuts site plan.
5 MR. PROFACI: So moved.
6 MR. MENNERICH: Second.
7 CHAIRMAN EWASUTYN: I have a motion by
8 Joe Profaci. I have a second by Ken Mennerich.
9 Any discussion of the motion?
10 (No response.)
11 CHAIRMAN EWASUTYN: I'll move for a
12 roll call vote starting with Frank Galli.
13 MR. GALLI: Aye.
14 MR. BROWNE: Aye.
15 MR. MENNERICH: Aye.
16 MR. PROFACI: Aye.
17 CHAIRMAN EWASUTYN: Myself. So
18 carried.
19 Since it's discretionary for the
20 Planning Board to hold public hearings on site
21 plans, I'll poll the Board Members to see if they
22 want to have one. Frank Galli?
23 MR. GALLI: No.
24 CHAIRMAN EWASUTYN: Cliff Browne?
25 MR. BROWNE: No.

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2 CHAIRMAN EWASUTYN: Ken Mennerich?
3 MR. MENNERICH: No.
4 CHAIRMAN EWASUTYN: Joe Profaci?
5 MR. PROFACI: No.
6 CHAIRMAN EWASUTYN: And myself no.
7 Does the Board -- we still have to do
8 ARB on the site plan. Do you know when you'll be
9 ready for ARB?
10 MR. GILLESPIE: We have -- I don't know
11 if -- did you get the preliminary?
12 MS. ARENT: An e-mail came in today and
13 I didn't have a chance to look at it.
14 CHAIRMAN EWASUTYN: We don't really
15 have the time to do that this evening.
16 MR. GILLESPIE: You would have to have
17 a chance to review it.
18 CHAIRMAN EWASUTYN: Do you have
19 anything you want to show us while you're here?
20 MR. GILLESPIE: I have some
21 prototypical renderings. If you can disregard
22 the drive-through just to get a feel from the
23 board. This is a new image. This is kind of why
24 we've been taking so long to do this is because
25 Dunkin Donuts has a new image that they've been

1
2 working on. It's a little more of an earth tone
3 type.
4 MS. ARENT: That's the sign? You
5 better take a look at that.
6 MR. GILLESPIE: What if the D&D goes
7 away?
8 MR. DONNELLY: It's the outside of
9 the --
10 MS. ARENT: The architectural
11 guidelines need to be reviewed. That will help
12 you.
13 MR. GILLESPIE: I would rather get this
14 feedback now.
15 MR. BROWNE: Do you have another
16 version?
17 MR. GALLI: We like the old Dunkin
18 Donuts better.
19 MR. GILLESPIE: I'm not the architect.
20 Karen, is that enough for you to give
21 some preliminary comments?
22 MS. ARENT: Yes. It will be pages
23 long. I can give you some comments, sure. I'll
24 refer to the section of the design guidelines.
25 MR. GILLESPIE: A lot of times we're

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2 caught -- our applicant is a franchisee so he has
3 to go --
4 CHAIRMAN EWASUTYN: What we'll do is at
5 a later time we'll have to do ARB.
6 At this point I'll turn to Mike
7 Donnelly. If you would give us conditions for
8 site plan approval.
9 MR. DONNELLY: I don't think it's
10 ready. I can review those that will be needed
11 but I think there's enough outstanding items.
12 Right?
13 MR. HINES: Yeah. We're waiting for
14 DEC.
15 CHAIRMAN EWASUTYN: You want to wait?
16 MR. DONNELLY: I think Karen says they
17 have to redesign the berm.
18 MR. HINES: Karen has some issues.
19 CHAIRMAN EWASUTYN: Then we'll wait
20 until you revise your plans, wait to hear from
21 the DEC. Once we get the revised plans from you
22 we'll set you up for the next available date. In
23 the meantime you could start getting renderings
24 back to Karen as far as whatever changes you want
25 to make. You can cc us on those and if you have

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some extra copies circulate them to the Board Members.

MR. GILLESPIE: Okay.

CHAIRMAN EWASUTYN: Thank for coming down.

MR. GILLESPIE: Thank you.

(Time noted: 7:45 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: December 29, 2007

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

----- X

In the Matter of

NEW OFFICE ADDITION FOR KRISHNA DIXIT
(2005-45)

338 Meadow Avenue
Section 66; Block 1; Lot 3
IB Zone

----- X

SITE PLAN

Date: December 13, 2007
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: GREGORY SHAW

----- X

MICHELLE L. CONERO
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CHAIRMAN EWASUTYN: The next item of business this evening is the office addition for Krishna Dixit. It's a site plan before us this evening and ARB. It's located on Meadow Avenue in an IB Zone. It's being represented by Greg Shaw.

MR. SHAW: Thank you. As the Chairman mentioned, I am representing Krishna Dixit tonight who is a local physician whose business is on the north side of Meadow Avenue. It is in the IB Zone, Interchange Business, and the parcel area is about four-tenths of an acre.

What we're proposing is a new addition to the existing office building where he has his medical practice. The existing building is just short of 1,200 square feet and we are looking to double it in size, the new addition being 1,178 square feet.

You'll notice on the plans that there are some variances that we have obtained. We obtained one for one side yard, both side yards, minimum rear yard, and along with that we have two nonconforming conditions due to lot area and lot width. This property, when it was created,

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was in the B Zone and then the Town changed it to IB which had greater bulk requirements, therefore those were the reasons for the deficiencies in the lot area and lot width and the need for the variances.

We are proposing not only the addition but basically to reconstruct the parking area. You'll notice on the plan that we're presently providing seven spaces. On the site development plan we're proposing a total of twelve spaces. There will be an aisle that will be double loaded.

The project will be serviced by an existing well which is presently in use. We do have permission to tie into the Town sanitary sewer system on Meadow Avenue, okay. So we'll be making that connection also.

So that, Mr. Chairman, is a brief overview. I also have the architecture. I did not plan on doing the architectural review tonight. With the architect not being here I guess I'm going to have to take on that task when the Board is ready for it. Thank you.

CHAIRMAN EWASUTYN: Any outstanding

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comments on the site plan. Pat Hines?

MR. HINES: Our previous comments have been addressed. We've reviewed the drainage and sewer connections and did confirm there will be no municipal water there. It will be continued to be serviced by a well. That's all the comments we had.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Greg mentioned he has the City of Newburgh sewer flow acceptance letter.

There was just an issue with the height of the light pole. He's only proposing one light pole to cover the whole parking area. To tie it in with what the design guidelines state, I don't know if he wants to discuss it or if the Board wants -- he probably has to add two different light bulbs if it's going to be shorter. I don't know that the impact is going to be greater on the site.

CHAIRMAN EWASUTYN: Greg, do you want to discuss that?

MR. SHAW: Well, I think Bryant mentioned the words there's only one. I

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2 understand that the guidelines are in place now.
3 The lighting was done long before the guidelines,
4 that's why the disparity. I would ask the Board
5 to possibly waive the height restriction for this
6 one pole on this project. If not we'll have to
7 go back and redesign it and put in two, maybe
8 three lights. I don't know what the coverage
9 would be. I'd ask you to consider just the one
10 tonight.

11 CHAIRMAN EWASUTYN: I don't think we
12 can waive the standards. Can we?

13 MR. DONNELLY: The guidelines -- unlike
14 the buffering which are Code, the guidelines are
15 just that, guidelines.

16 CHAIRMAN EWASUTYN: You can waive them.

17 MR. DONNELLY: If you can not follow
18 them in all cases you may waive or adjust them as
19 you see fit.

20 CHAIRMAN EWASUTYN: The height being
21 shown now?

22 MR. COCKS: I think it's
23 twenty-two feet.

24 MR. DONNELLY: It's for an existing
25 pole you say?

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MR. SHAW: It's a new pole. We're doing the parking lot over.

MR. BROWNE: I would suggest if we do waive it we are very specific so it doesn't become a precedent for the next twelve applications.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I guess my question, Greg, is they show flood lights on the corner of the building aimed towards the parking lot.

MR. SHAW: That's an overkill. That could be taken out.

MR. MENNERICH: I was wondering if you could leave those and shorten the pole.

MR. SHAW: I don't think so because I think the concern is going to be the throw in this direction, all right. So I would think that -- if you were to knock this pole down I don't think you're going to get the proper number of foot candles at the furthest extremity. I can tell you when the foot candle values were calculated those existing flood lights were not taken into account. I really don't even know what the wattage is.

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MR. MENNERICH: Depending on what they were they could do a pretty good job of lighting that area up.

MR. SHAW: They could.

CHAIRMAN EWASUTYN: So the light pole would be -- probably would serve the property more during the winter months than the -- I mean the normal hours of the office are? What would be the hours the office is open?

MR. SHAW: Like any business, probably closes at 5, 6 o'clock maybe. You're right, they would be I think on some type of photo cell where it would be primarily in use during the winter months.

MR. HINES: There's one large tree that's being preserved there.

CHAIRMAN EWASUTYN: Joe, do you have any comments on this?

MR. PROFACI: I really don't see a problem with leaving it at -- what is it -- twenty-two or twenty-five feet?

MR. MENNERICH: Twenty-five.

MR. PROFACI: What do the guidelines say?

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CHAIRMAN EWASUTYN: Sixteen.
Frank?

MR. GALLI: I don't have a problem
leaving the pole.

CHAIRMAN EWASUTYN: Mike, I think what
we can work on, based upon Cliff Browne's
recommendation, I think we need some verbiage if
we were to waive that consideration for the
guideline standards.

MR. DONNELLY: I think you could say
the design guideline regarding the lighting pole
height is waived given the small size of the
site, the fact that only one pole is involved and
the advantage of not requiring additional
lighting poles to be erected --

CHAIRMAN EWASUTYN: Okay. Then I
would --

MR. DONNELLY: -- if that's your
sentiment.

MR. GALLI: I think Pat said there is a
huge tree on the property.

MR. DONNELLY: That will block its
visibility?

MR. HINES: There's a large tree

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staying, or is that going?

MS. ARENT: The oak tree is going because they called -- Mr. Shaw called me and let me know that there's a lot of older people that go into this building and the acorns were presenting a major tripping hazard for them. Unfortunately it's going because of safety reasons.

MR. BROWNE: Mike, somehow if you could work in with the remaining tree or what not would serve to satisfy the intent of the lower thing so more or less he satisfied the intent even though technically it's --

MR. HINES: The tree is not staying.

MR. BROWNE: The tree is not staying? Oh, I thought the tree was staying.

MR. SHAW: It was originally going to but with the doctor having a lot of elderly patients, the acorns fall on the ground during the fall and they really get to be a problem. They're quite numerous.

CHAIRMAN EWASUTYN: Again, on your behalf why you wouldn't put in an extra two sixteen-foot light poles? What's the purpose?

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We're spending a lot of time on this.

MR. SHAW: I know we are. It's really economics. Can two poles fit on the site? Probably. I don't know what the illumination would be. Maybe it would be too much. There's a lot of twenty-five-foot poles in the Town. I would just ask for this waiver.

CHAIRMAN EWASUTYN: I know. You always keep going back to the fact that there is a lot. We're saying the guideline standards have changed and we can't always reflect upon what is. We're moving forward into a new era as far as design standards, so we have to forget yesterday and start looking at today.

MR. SHAW: I understand. I just -- I focused on the word guidelines from your attorney, that's why I asked for the waiver.

CHAIRMAN EWASUTYN: Cliff, would you be satisfied if Mike provides us with verbiage that wouldn't set a precedent on this?

MR. DONNELLY: It always does to some extent.

I mean is one of your fears that you will lose the opportunity to obtain an approval

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tonight if there has to be a redesign? I don't think we're otherwise ready. If that's conceivably it, if you would authorize Pat to sign off on the amendment of the plan to add another pole, then that would avoid the need to return if everything else is ready, and I don't know whether it is.

MR. SHAW: Is that a question to me?

MR. DONNELLY: Yes.

MR. SHAW: You were looking to the Board when you were asking.

MR. DONNELLY: It's a question to you and an idea as to whether or not the Board would go along with it. I sense the need is not to have to come back.

MR. SHAW: I think we're right down to the wire now. I would like to think the Board would give approval whether it's one pole or two. So no, I don't think that comes in to play. It's really just the economics. My client has put a lot of money into the site work for a very small addition. It took us three trips to go to the Zoning Board of Appeals. I'm just looking to save him some money, that's all.

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CHAIRMAN EWASUTYN: You don't want to sacrifice part of your fees so we can have the light pole in the spirit of Christmas?

MS. ARENT: This is a separate section that's hard to read but it's in the design guidelines that parking lot lighting should not exceed twenty feet in height. So this probably could apply to the parking lot lighting section.

CHAIRMAN EWASUTYN: Okay.

MS. ARENT: I don't know if you can reduce --

CHAIRMAN EWASUTYN: This is twenty-five feet being proposed here. Do you want to get him to reduce the height to twenty feet?

MR. BROWNE: It's not installed.

MR. SHAW: If I have to go to twenty feet I'm going to end up with two poles anyway because I'm not going to get the throw with a shorter pole.

CHAIRMAN EWASUTYN: Again, I think what we're trying to say here too is it's only going to be used for a short period of time. As Ken pointed out, you have some illumination on the

1
2 side of the building that could augment what
3 you're proposing with this twenty-foot light. If
4 you're not satisfied that you have enough
5 lighting with the twenty-foot light, then maybe
6 you could increase the light on the outside.

7 MR. SHAW: Okay. I think the Board is
8 saying that they want to adhere to the sixteen or
9 the twenty foot. I can't answer your question
10 because I don't know what the wattage is on the
11 building, I don't know if we make the pole
12 shorter and if it's just one pole whether there
13 will be enough illumination, whether we meet the
14 minimum foot candles. I just can't give you
15 those answers in this forum. I think if the
16 Board doesn't feel that the waiver is warranted,
17 we're going to have to put two poles in and move
18 on.

19 CHAIRMAN EWASUTYN: What is the
20 consensus of the Board. Frank?

21 MR. GALLI: I have no problem with one
22 pole. If you want to go two poles --

23 MR. BROWNE: I don't like -- we worked
24 really hard to get the guidelines in place and I
25 am reluctant to do things to just put that aside.

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CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: I guess I'd prefer not to see the tall -- the twenty-foot pole would be fine but I prefer not to see the twenty-five foot pole.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: If that pole can do the job of lighting the parking lot as required given that you do have elderly people going in and out of that building, I'm fine with the twenty-five foot pole.

CHAIRMAN EWASUTYN: And I'm split down the middle on it. I think we're really split down the middle on it. We have two that are saying they're not -- they'll kind of go along with it. I guess I'm leaning towards sticking to the guideline standards . If we can't come up with twenty feet -- I think twenty feet is appropriate for the size of the lot and the size of this building. In the course of my normal construction I set a lot of light poles. I think twenty foot is reasonable for this site. Twenty-five feet is kind of tall.

MR. SHAW: Okay. If that's what the

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Board's decision it that's what it is.

CHAIRMAN EWASUTYN: Yeah. So I think except for that we can make for a condition of the site plan approval.

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: Karen.

MS. ARENT: I had one minor comment, for Greg to move the garbage dumpster enclosure, which is right in the front of the site, to hide it a little bit further in the back. He has no problem doing it.

Well, you have no problem doing that; right?

MR. SHAW: I don't have a choice. So yes, we will relocate it.

CHAIRMAN EWASUTYN: Fine. Thank you. Then putting all that aside; Mike, do you want to give us conditions for approval for the site plan?

MR. DONNELLY: The first would be a sign-off letter from Karen on the dumpster relocation. And as long as she's looking at the plan for that purpose, a sign off that either the height of the pole has been reduced to twenty

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feet or two lighting poles under that standard has been provided for the purpose of lighting. We would make reference to the Zoning Board of Appeals decision of April 27, 2006 within the decision. We haven't covered ARB yet so we'll stay away from that condition.

Is there a requirement of a landscape fee?

MS. ARENT: Yes.

MR. DONNELLY: The usual condition regarding no outdoor fixtures other than as shown on the plan. That would be it.

CHAIRMAN EWASUTYN: Having heard the conditions of approval for the new office addition for Krishna Dixit, I'll move for that motion.

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.

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MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself.

Give ARB a shot.

MR. SHAW: Okay. I don't think it's going to take that long. This is a picture, and I think it would be best to pass this around, of the existing building. Black shutters, a dark siding and -- actually a dark roof and gray siding.

Again, this is the outline of the existing building. This is what you would see as you would now be passing along Meadow Avenue.

They would be redoing the entire roof with this dark color of gray, the trim would be white and the siding would match the existing siding, okay, which would be the gray tone. So overall you basically have a blend of the dark roof, gray siding and white trim. The architecture of the new building would pretty much be consistent with the existing building. I think it's an appropriate look because it's a

1
2 combination of a commercial and residential area
3 as you go down Meadow Avenue. I don't think you
4 want something too commercial in that respect.

5 If you want you can just --
6 CHAIRMAN EWASUTYN: Comments from the
7 Board?

8 MR. GALLI: I have no problem. It
9 looks fine.

10 MR. BROWNE: Good.

11 MR. MENNERICH: Good.

12 MR. PROFACI: It looks fine.

13 MS. ARENT: I think it's very nice.

14 CHAIRMAN EWASUTYN: What's the height
15 of the building?

16 MR. SHAW: It's going to be
17 twenty-five feet maximum.

18 CHAIRMAN EWASUTYN: I think actually
19 bringing the scale of the lighting down a few
20 feet would make the lighting more in proportion
21 with the building. I think there would be more
22 of a balance to that.

23 I'll move for a motion to approve the
24 ARB for the office addition for Krishna Dixit.

25 MR. PROFACI: So moved.

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2 MR. MENNERICH: Second.
3 CHAIRMAN EWASUTYN: I have a motion by
4 Joe Profaci. I have a second by Ken Mennerich.
5 Any discussion of the motion?
6 (No response.)
7 CHAIRMAN EWASUTYN: I'll move for a
8 roll call vote starting with Frank Galli.
9 MR. GALLI: Aye.
10 MR. BROWNE: Aye.
11 MR. MENNERICH: Aye.
12 MR. PROFACI: Aye.
13 CHAIRMAN EWASUTYN: Myself yes. So
14 carried.
15 MR. SHAW: Thank you.
16 MS. ARENT: Greg, can you just make
17 sure you show air conditioning units on your site
18 plan?
19 MR. SHAW: Show the air conditioning
20 units?
21 MS. ARENT: Yes. We have a -- in the
22 resolution you can't put anything on the site
23 that's not shown on the site plan.
24 MR. SHAW: Okay. I'm not sure where
25 they are but I'll have to find that out.

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MS. ARENT: Okay.

(Time noted: 8:03 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: December 29, 2007

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

----- X

In the Matter of

NEWBURGH TOWNE CENTER
(2006-41)

Route 300 and Old Little Britain Road
Section 97; Block 3; Lot 1
IB Zone

----- X

SITE PLAN

Date: December 13, 2007
Time: 8:04 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: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: GREGORY SHAW

----- 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 Newburgh Towne Center. It's a site plan located on Route 300 and Old Little Britain Road. It's in an IB Zone and it's being represented by Greg Shaw.

MR. SHAW: Thank you. This is the third -- maybe fourth but probably the third time you've seen this site. We came in to the Board initially to review the project and you sent us back to do some work with respect to modifying the concept plan. We returned to the Board and got concept plan approval on this project, pretty much this layout. We left that meeting and then we went to work on the drawings, what we presented to the Board. We got concept approval. It was really just I believe two sheets. Now we've submitted a full set of drawings including everything from the grading, to the utilities, to the landscaping, to the stormwater management, to the lighting which I think is going to have to be adjusted also. We're in the process of moving towards final site plan approval.

The major change really from our

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concept plan approval is that the buildings got knocked down maybe 1,500 square feet in size. That's about all. The buildings did not go up in size, they went down in size.

The flow of the traffic is pretty much the same. We're going to have our major entrance off of Union Avenue. It will be two lanes coming in, two lanes exiting. Through our site will be a major spine of about thirty feet in width. We'll be exiting onto Old Little Britain Road in this location. This not only incorporates the former Flannery Animal Hospital but also the Rizzo property which is still there and also Simoni's Clothing which is on the corner. That was purchased and incorporated into the site.

With that we're proposing four buildings, Walgreen's, Staples and an attached retail building designated as number 1 and a free-standing retail building number 2.

With respect to utilities, we'll be tying into the Town water and sanitary sewer system. Our stormwater discharge will be to the City of Newburgh reservoir. We've already sent plans to the water superintendent in the City and

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the city engineer to begin to review those documents.

Part of the project actually being in the Town of New Windsor and the fact that we're an abutting municipality, we delivered a set of plans to their planning board to start their review so it could be a coordinated effort between the two towns. That is a quick overview.

We received the review comments from your consultants. We'll answer any questions that the Board may have.

I may bring up -- I would like to bring up Mr. Coppola is with us tonight. We're not here for architectural review, we just have some renderings of the building.

CHAIRMAN EWASUTYN: If he came out in a snowstorm, which is the first time -- I can't believe you're here.

MR. COPPOLA: I only have fifteen minutes to come. I didn't come from Albany.

MR. SHAW: If you're interested in the architecture, he's here to show you.

CHAIRMAN EWASUTYN: I'm pleased to see

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that you're here.

MR. COPPOLA: Thank you. Just really quickly, there's three buildings that we're doing. The retail building here is 14,000 square feet, the large Staples building and the retail building next to it and the Walgreen's here. We've come the furthest on the retail building here. This is basically what we're presenting.

There's going to be an I-HOP on the end closest to Union Avenue. That will have a gabled roof all down that side elevation so we'll screen any of the rooftop units in the rear, we'll make sure nobody sees them. This facade is going to be a varied facade so that all the individual shops can be read from the parking lot on an individual basis.

There will be an I-HOP here, four shops in the center, a retail unit on the end and then it will probably be a drive-through. That probably will be a bank. So that's the plan here.

There will be a canopy that connects all these.

These range from about 1,600 square

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feet to the large one on the end is the I-HOP. That is going to be the most interesting. The Staples building in the rear here, that's going to be basically their prototype. We're going to coordinate the materials so we're using the same materials but you're going to basically get something like a Staples prototype here.

This building I think we still need to do a little bit more work on. It's a retail building next to it. It's 6,000 square feet.

I think we have an opportunity here to create something interesting with the entrance here kind of directly off Old Little Britain Road. We're working on kind of a canopy that winds around this whole thing, this whole three-sided elevation, but we're still working on that there.

The last is the Walgreen's and that's more typical of their prototype with the Chamferd corner that you see kind of on a free-standing Walgreen's. That still has a drive-through back here.

MR. GALLI: Where is the drive-through on that?

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2 MR. COPPOLA: Back here. Right here.
3 MR. SHAW: Yes.
4 MR. COPPOLA: Right back there. We
5 have another drive-through here.
6 MR. GALLI: The bank?
7 MR. COPPOLA: That's probably a bank.
8 I mean the thought is we'll make a full
9 submission after this for the next meeting for
10 ARB with all the elevations, all the materials,
11 everything coordinated.
12 CHAIRMAN EWASUTYN: What we're looking
13 at tonight; Frank, do you have any comments?
14 MR. GALLI: Actually I like that part
15 right there, the I-HOP part. The Staples and the
16 Walgreen's, just basically hopefully get them the
17 same colors.
18 MR. BROWNE: I have a comment, or
19 question. Across the street we're having a new
20 facility going in there which has a -- what would
21 you call it -- a European --
22 MR. GALLI: It looks like that.
23 MR. COPPOLA: They have a tower I
24 think.
25 MR. BROWNE: What would you call it,

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Karen?

MS. ARENT: It's more Italian.

MR. BROWNE: How would you see that this goes with that being so close to each other?

MS. ARENT: I almost think that we shouldn't try to match them just because the other architects are taking off on the existing Cosimo's building and developing the plaza in that manner whereas I think this is almost more Newburgh in style. I think that it would be -- I think the stonewalls will kind of tie things together, and maybe some of the materials on the buildings. Maybe we can also look to see if they have some nice fixtures.

MR. BROWNE: From the other side of this then is the Home Depot.

MS. ARENT: We can't even think about that one. There's lots of White Pines that hide it.

MR. BROWNE: So from your opinion you think this will work good in that vicinity?

MS. ARENT: I think that's a nice building right there, that particular building.

MR. BROWNE: Okay. If you like it I

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like it.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The brick that you would use would be similar on all three buildings?

MR. COPPOLA: Yes. Exactly. I mean the cultured stone is going -- you're going to have one cultured stone. The brick is going to be the same, too. We're going to tie the materials together that way.

CHAIRMAN EWASUTYN: And the rear elevation would be similar as far as the materials?

MR. COPPOLA: It's going to be dressed.

CHAIRMAN EWASUTYN: Is it going to be the same? What do you mean by dressed?

MR. COPPOLA: It's not going to be a blank wall, the rear elevation of this. We'll bring some of the cultured stone around and we'll bring the stowe around. I haven't actually drawn that yet but we've talked about doing that. This side elevation here you're going to see quite a bit. I think that's going to be important for us to look at, too. We'll bring those materials

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around.

CHAIRMAN EWASUTYN: And that side Tony -- move your finger. That side will be similar to what, the material? That's an active site as far as almost having three faces to it.

MR. COPPOLA: You're right. I mean you're going to see a lot of all these buildings. You're exactly right.

This reverse gable and this reverse gable go all the way down the building and then this comes out. I think I have to develop something here, but we haven't really done that yet.

CHAIRMAN EWASUTYN: And that's where the bank might be?

MR. COPPOLA: Yeah. Probably there.

CHAIRMAN EWASUTYN: Okay. So more than likely there would be the drive-through there?

MR. COPPOLA: Mm'hm'.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: I don't have anything right now.

CHAIRMAN EWASUTYN: Just a question. Will this be a phased development?

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MR. SHAW: Will this be a phased development. I don't know the answer to that. I would think that at one time retail building number 2, Staples, and probably retail number 3 would be built out simultaneously. Walgreen's, because it's somewhat removed, may be a second phase. I haven't gotten to those details with my client.

MR. DONNELLY: I think if it's going to be we'll need to know that. We've had the issue with some other buildings where no one talked about phasing and suddenly it's not all being built. If you do propose phasing we want to see what will happen in that area until that second phase comes in, so discuss it with the client and report back to us.

MR. HINES: That's the reason for my comment 5 there.

CHAIRMAN EWASUTYN: I know you were looking to get back on a work session to work out some of the details on this project. Were you not?

MR. SHAW: Yeah. Again, this submission really incorporates a full submission

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2 into the Board. With that we have a full set of
3 review comments. I think we can probably address
4 within my office and the other consultants
5 probably sixty percent of the comments. I would
6 like an opportunity to stop at the consultants'
7 meeting to talk about some of the other comments.
8 I would like to get down to a short list before
9 we return back to this Board, the majority of
10 which I do not need the consultants on, some of
11 which I do. I'd like permission from the Board
12 to be able to appear before the consultants'
13 meeting to talk about some issues.

14 CHAIRMAN EWASUTYN: Okay. Is that
15 agreeable with the consultants?

16 MR. HINES: Yes.

17 CHAIRMAN EWASUTYN: Is that agreeable
18 to Board Members?

19 MR. MENNERICH: Would you provide the
20 consultants a list of the items you want to
21 discuss at that meeting?

22 MR. SHAW: Before the meeting or at the
23 meeting?

24 CHAIRMAN EWASUTYN: Before the meeting.

25 MR. SHAW: I could do that, sure.

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CHAIRMAN EWASUTYN: We'll actually take a copy of that. That's something that the Board has recently adopted as a policy so we know what the discussion will be and everyone will be prepared for it.

MR. SHAW: Absolutely. We will not be talking about lighting. That's behind us.

MR. COCKS: Just regarding the work session date, since Christmas is the Tuesday that we normally do it, the date is actually the 18th. That's only a couple days away.

CHAIRMAN EWASUTYN: I don't think you'll be ready that soon. January then.

MR. COCKS: The next one will be the middle of January.

MR. SHAW: That's fine. We have work to do. It's not like we need the consultants to address a lot of the comments.

CHAIRMAN EWASUTYN: So you'll provide us with a list and then the next available date in January or in 2008, we'll set you up for that.

MR. SHAW: That's fine.

CHAIRMAN EWASUTYN: I'll move for a motion to set this up for the next available date

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for a consultants' meeting in the year 2008.

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 ask 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: 8:18 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: December 29, 2007

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

----- X

In the Matter of

SHOPPES AT UNION SQUARE
(2007-05)

Route 300 & Orr Avenue
Section 96; Block 1; Lot 6
IB Zone

----- X

SITE PLAN & LOT LINE CHANGES

Date: December 13, 2007
Time: 8:19 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: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

APPLICANT'S REPRESENTATIVE: CHRIS VIEBROCK

----- X

MICHELLE L. CONERO
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CHAIRMAN EWASUTYN: The final item I have of business this evening is the Shoppes Union Square. It's a site plan and lot line changes located on Route 300 and Orr Avenue. It's in an IB Zone and it's being represented by Chris Viebrock.

MR. VIEBROCK: Good evening. My name is Chris Viebrock from Langan Engineering returning in front of the Board now. The last time we were in front of the Board was in October. Following that meeting we had taken the opportunity to meet with the consultants twice to work out some details that both we were struggling with and that we wanted to come to a, you know, mutual conclusion on before coming back in front of the Board. We feel as though, after the second meeting, that we've taken care of a lot of these major issues.

Some of the highlights of those issues are -- one was to provide a pedestrian connection in front of the new retail buildings along Route 300.

Additionally we provided some additional landscape islands in the parking lots

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to break up the mass of the parking lots.

We've also GPS located existing trees along Orr Avenue and along Route 300 in order to preserve them.

We've received comments from your consultants and we feel as though there's probably two major comments that we want to address right now and just get out of the way. One is the height of the wall. My client, Mr. Goddard, has agreed that we will go to a thirty-six inch high wall for the site. If there's any issues, we'd like to work through them.

The sight distance with Mr. Wersted. We haven't received any comments. I'm not sure if he's commented anything about the walls or anything of that nature.

The second issue is along Orr Avenue, trying to preserve some of these existing oak trees that are along there. I've taken the opportunity prior to this meeting to look at that. I can provide an additional I would say five to seven feet away from those trees by incorporating -- by doing a little bit of

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2 shifting of the parking lot and also by reducing
3 some of the grading that would impact these
4 trees. So we can preserve a large majority of
5 these oak trees along Orr Avenue.

6 The remaining comments from your
7 consultants we have no issue with. We feel as
8 though they're very minor clarification issues
9 from Mr. Hines and Ms. Arent. Mr. Cocks didn't
10 really have too many comments.

11 So at this time we'd like to discuss
12 possibly making a determination for SEQRA and,
13 you know, moving the project along.

14 CHAIRMAN EWASUTYN: Just as a minor
15 note, Chris had called the office the other day
16 and Dina -- yesterday Dina faxed you the comments
17 from the consultants that you didn't receive.
18 Correct?

19 MR. VIEBROCK: I had received
20 everybody's. It was kind of in a mid stage. I
21 was getting the comments from the consultants and
22 Dina as well. So I did receive all the comments.

23 CHAIRMAN EWASUTYN: I just wanted to
24 make sure you were receiving them.

25 MR. VIEBROCK: I just never received

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Mr. Wersted's. That's all.

CHAIRMAN EWASUTYN: Okay. He's here tonight looking for a SEQRA determination.

MR. HINES: It's really critical for the project because they have DEC permits that they need and DEC will not act on those permits until the Board as lead agency does that.

I have clean-up items on the stormwater, some note changes.

I was interested to know how DEC is -- I know you took out a lot of walls along the stream.

MR. VIEBROCK: Yes. We've actually submitted an application for a pre-application meeting with the DEC to try to get their comments as early as possible in this process so that it doesn't affect the plan significantly.

As Mr. Hines stated, the experience has been that the DEC won't review a project until it's gotten a neg dec -- SEQRA determination and also like a preliminary approval. So we are -- also the Army Corp has walked the site already. The Army Corp has walked the site. There was only one flag adjustment and it was actually over

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in this area here. That didn't affect any of our design. We already sent in requests for a jurisdictional determination and hope to get that within the next few months.

MR. HINES: I guess I'm saying I think that the issues are sufficiently addressed that a negative dec is in order.

As far as drainage, water, sewer, they're on there, we know how they're going to handle them. I have some technical things to get tweaked, catch basins, inverts need to match the plans. Otherwise I'm okay with that.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: In my comment letter from before this revision the Orange County Planning Department had a whole laundry list of items that they wanted addressed. I went through and itemized them and I think all of those comments were addressed.

They addressed public transportation on the site by adding a bus stop on the interior instead of on the outside.

Pretty much all of our planning

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comments were addressed.

They regraded the sidewalk from The Vitamin Shoppe to Cosimo's. All the pedestrian access is connecting the site to Lowe's on there.

I think everything that we have has been addressed.

There's just a couple clean-up items from work session that were going to be in the next revision. I think other than that everything was addressed.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

MS. ARENT: It's great that you preserved the oak trees. That was one of my big concerns because they really are -- there's few remaining trees in that area. It's great to try to save how ever many you can.

Another big comment I had was regarding the tight sidewalks for the retail buildings in the back, and how to make those buildings feel not so high, and to articulate the facade in accordance with the design guidelines. They showed us elevations of these buildings that show that they can reduce the overall feeling of scale

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2 of the building in relationship to the tightness
3 of the sidewalks. They addressed that major
4 comment as well as adding the stonewalls along
5 the front of the site to help unify it with the
6 rest of the corridor that's being developed.
7 All of my major comments have been
8 addressed.
9 CHAIRMAN EWASUTYN: Okay. Frank Galli?
10 MR. GALLI: No additional comment.
11 CHAIRMAN EWASUTYN: Cliff Browne?
12 MR. BROWNE: Sounds good so far.
13 CHAIRMAN EWASUTYN: Ken Mennerich?
14 MR. MENNERICH: No questions.
15 CHAIRMAN EWASUTYN: Joe Profaci?
16 MR. PROFACI: Nothing additional.
17 CHAIRMAN EWASUTYN: I would ask will
18 this be a phased development? It's something you
19 don't have to respond to now but I think, as you
20 heard earlier with Mr. Shaw, at some point in
21 time we would have to know that.
22 MR. VIEBROCK: We believe it's going to
23 be phased in relationship with the DEC SPDES
24 permit to maintain the five-acre disturbance. We
25 don't plan right now on going over five acres but

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as the plans develop we'll have to make that determination. As of right now we don't plan to go over five acres.

MR. HINES: One of the reasons we're talking about phasing is not as construction phasing but as you're opening buildings. Right now we're looking at this kind of as a unified single site plan. What's happening is we're seeing sites like this where maybe your first two buildings towards Cosimo's are constructed and you're looking for COs and the building department says everything is not done. If you have a plan that some are going to come before others and they can stand alone, we may want to look at that.

MR. GODDARD: I think at this point we would like to do the whole thing at once.

MR. HINES: That's a great answer.

MR. VIEBROCK: I think we have enough time.

MR. GODDARD: We have enough to go at this point.

CHAIRMAN EWASUTYN: Having heard from our consultants, I'll move for a motion that we

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declare a negative declaration for the Shoppes at Union Square for a site plan and lot line changes.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

MR. HINES: One of the things you might want to talk about is a public hearing or not.

CHAIRMAN EWASUTYN: Okay. Actually, we would have -- we never raised that with Mr. Shaw but we'll make our SEQRA determination. Does the Board want to have a public hearing on this?

MR. GALLI: No.

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MR. HINES: Only one house remains in the back.

MR. GALLI: The one house was part of the property?

MR. HINES: No.

CHAIRMAN EWASUTYN: Palmerico won't be part of this and there's one or two on there that won't be on this.

MR. GALLI: That's the front part.

MR. COCKS: That lady who doesn't want to move in the back.

MS. ARENT: See that square of white?

MR. GALLI: She doesn't want to go?

MR. HINES: I'm sure Mr. Goddard tried.

MR. GODDARD: Yes. I think she's actually happy as long as her basement doesn't flood.

MR. GALLI: I still don't think we need a public hearing.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I agree.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I agree.

CHAIRMAN EWASUTYN: Joe Profaci?

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MR. PROFACI: No public hearing.

CHAIRMAN EWASUTYN: I'll move for a motion that we waive the public hearing for the Shoppes at Union Square.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Thank you for coming out.

(Time noted: 8:28 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: December 29, 2007

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

----- X

In the Matter of

SHYAM, INC.
(2005-51)

Narrative on the Kumon Learning Center

----- X

BOARD BUSINESS

Date: December 13, 2007
Time: 8:28 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: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

----- X

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CHAIRMAN EWASUTYN: We just have two items. Jim Raab was here earlier and he made it sound like he was coming back. I guess he's not.

Mike, do you want to bring us along on the Shyam Learning Center?

MR. DONNELLY: You remember when this was on last week we went through how the original approval worked. The site as proposed could not, if it were entirely retail, meet the parking requirements, therefore the applicant agreed that and included a map note that at least 1,210 square feet of the project site would be reserved for office use. The user that is now before you has, in a narrative, described the particulars of the use. It appears to me from a reading of that to be in the nature of educational tutoring. The question then became whether or not that is an office use. The first direction we sort of went down last week was if they were teachers licensed by the State then they would be a profession and therefore this could be a professional office use. The narrative makes very clear, however, that these are not licensed teachers, so the professional office use does not lend any support

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2 to this being an office use. However,
3 interestingly when you look at the definition,
4 and I've quoted it on page 2 of the letter, of
5 school and college, which by the way schools and
6 colleges are not permitted in this zone, at least
7 in what's put in the first half of this. It
8 talks about true schools, meaning private,
9 public, parochial, with true curriculum,
10 et cetera. Then it adds a sentence at the end
11 that I've italicized that says, "All other
12 schools," and then it gives an illustrative list
13 such as business, beauty, computer schools,
14 dance, music, et cetera are allowed in offices as
15 office uses. I left out some of the words in
16 there. Therefore, since that list was not
17 limiting but illustrative, if you find that the
18 nature of the educational tutoring described in
19 the narrative is all educational or school use
20 such as those listed, then I think you could
21 appropriately make the finding that what is
22 proposed is allowed in an office use and the
23 square footage of this would be the 1,210 square
24 feet that are required. It's not the direction
25 that it appeared we were likely to go last week

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but the narrative I think focused your attention on what needed to be seen. When you look at this definition, which is sort of in an unlikely place, it shows that this type of school, if you find it to be consistent with those listed on an illustrative basis, would indeed be a permitted office use.

MR. BROWNE: Mike, could there be an argument that it is not in nature with the illustrative list?

MR. DONNELLY: Yes. I think you would have to make the determination that it is. Recognize that that list was not intended to be exhaustive or limiting because it talks of as such and ends with et cetera.

MR. BROWNE: My question is could there be an argument against that, that it is not, that it wouldn't -- could you as a lawyer make an argument that it doesn't fit that type of category at all, it's not something you could do?

MR. DONNELLY: Only because lawyers can make arguments about anything.

MR. BROWNE: A reasonable, legitimate one.

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MR. DONNELLY: Well, if you want to make that distinction what you would say is in the illustrative list we are including non-traditional educational type of schooling because if you look at the list it has to do with dance, and business, and beauty, and computer. The first half of the definition relates to curriculum of elementary or secondary education or college degree. Therefore, if you want to hear that argument out, educational tutoring to assist high school students is more akin to the first half of the example and is completely distinct from the non-educational, you know, illustrative list in the second half. I wouldn't find that argument convincing because I think the distinction here that is trying to be made is true educational programs versus those things that are akin to that but not the traditional school building where kids go from 9 to 5 or 9 to 3 or whatever they do these days.

So I think you could be well -- you could arguably make the distinction either way but I think this is a fit that to me appears to be contemplated by the second half of the

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language.

MR. BROWNE: Thank you.

MR. MENNERICH: John, I certainly don't have a problem with it being considered office. I guess my question is the 1,210 square feet. I thought the unit that they were going to be using was less than that.

MR. DONNELLY: I think it's how you count it is what I think the issue is. I think it's exactly 1,210 from the footprint outside wall dimension. The issue was whether or not that's the proper measure. I think Ed has told us he consistently has utilized the outside wall measurements and computed parking requirements. Indeed in the last page of the letter, and I found it interesting and it isn't determinative either way, but if you look at retail store on the last line it talks about one parking space per 150 square feet of gross leasable floor space. That again could be inside or outside wall. Office building talks about one per 200 square foot of floor area. I'm not so sure that either of those things are supposed to be a distinction. I think it's a rather loose use of

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words in both cases.

If this Board has consistently through its consultants used an outside wall dimension, I don't see any reason why that should not be followed here.

CHAIRMAN EWASUTYN: Okay. Joe, any comments?

MR. PROFACI: No. I'm comfortable with it being considered office use.

CHAIRMAN EWASUTYN: Mike, do we have to make a motion now for this?

MR. DONNELLY: I don't think so. I think you may want to develop your consensus and report back to Jerry that you have found that this is an office use within the meaning of the Ordinance. It isn't an approval in that sense because you've already approved the project. If you want to vote on your feeling that that is indeed the proper interpretation, then I think that's a good idea.

CHAIRMAN EWASUTYN: Okay. Then I would like to move for a motion that we move for a vote to acknowledge that the Kumon Math Reading Success Center is in harmony with an office use.

SHYAM, INC.

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MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Bryant, would you take the opportunity of coming up with a short little letter to send on to Jim -- I would cc Jim Raab but I would send it to Jerry Canfield, and cc Joe Mattina and bring that together?

MR. COCKS: Yes.

(Time noted: 8:35 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: December 29, 2007

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

----- X

In the Matter of

GUERRA SITE PLAN
(2003-61)

Return of landscape bond

----- X

BOARD BUSINESS

Date: December 13, 2007
Time: 8:35 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: MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
PATRICK HINES
KAREN ARENT

----- X

MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
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1
2 CHAIRMAN EWASUTYN: The last item of
3 business before we go is I'll move for a motion
4 to release the landscape bond estimate for the
5 site plan for Guerra in the amount of \$1,500.
6 MR. PROFACI: So moved.
7 CHAIRMAN EWASUTYN: I have a motion by
8 Joe Profaci. Do I have a second?
9 MR. GALLI: Second.
10 CHAIRMAN EWASUTYN: I have a second by
11 Frank Galli. Any discussion of the motion?
12 (No response.)
13 CHAIRMAN EWASUTYN: I'll move for a
14 roll call vote.
15 MR. GALLI: Aye.
16 MR. BROWNE: Aye.
17 MR. MENNERICH: Aye.
18 MR. PROFACI: Aye.
19 CHAIRMAN EWASUTYN: Myself. So
20 carried.
21 I thank you all for coming out. I'll
22 see you one more time next week.
23 I'll move for a motion to close the
24 meeting of December 13th.
25 MR. GALLI: So moved.

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MR. MENNERICH: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

(Time noted: 8:38 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: December 29, 2007

