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

----- X  
In the Matter of

GASLAND PETROLEUM  
(2021-23)

42 South Plank Road  
Section 71; Block 2; Lot 11  
B Zone

----- X

SITE PLAN/ELEVATION CHANGE

Date: February 1, 2024  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
CLIFFORD C. BROWNE  
STEPHANIE DeLUCA  
KENNETH MENNERICH  
DAVID DOMINICK  
JOHN A. WARD

ALSO PRESENT: STEPHEN GABA, ESQ.  
PATRICK HINES  
JAMES CAMPBELL  
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: CHRISTOPHER LAPINE

----- X

MICHELLE L. CONERO  
Court Reporter  
845-541-4163  
michelleconero@hotmail.com

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CHAIRMAN EWASUTYN: Good evening, ladies and gentlemen. The Town of Newburgh Planning Board is starting their meeting of February 1, 2024. This evening we have four agenda items and one Board business discussion at the end of the formal meeting.

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

MR. DOMINICK: Present.

MS. DeLUCA: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. BROWNE: Present.

MR. WARD: Present.

MR. GABA: Stephen Gaba, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. HINES: Pat Hines with MHE Engineers.

MR. CAMPBELL: Jim Campbell, Town of Newburgh Code Compliance.

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MR. WERSTED: Ken Wersted,  
Creighton Manning Engineering,  
Traffic Consultant.

CHAIRMAN EWASUTYN: At this  
point we'll turn the meeting over to  
Jim Campbell.

MR. CAMPBELL: Please rise for  
the Pledge.

(Pledge of Allegiance.)

MR. CAMPBELL: Please turn off  
your cellphones or put them on  
silent, please.

CHAIRMAN EWASUTYN: The first  
item of business this evening is  
Gasland Petroleum. It's located on  
42 South Plank Road. It's a site  
plan/elevation change. It's in a B  
Zone. It's being represented by  
Chazen Companies, Chris Lapine.

MR. LAPINE: Good evening. My  
name is Chris Lapine with Chazen --  
formerly the Chazen Companies. We're  
now known as LaBella.

This is a project on Fifth

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Avenue that obtained site plan approval. We had obtained signed plans in the summer of 2023.

The applicant has decided to make some modifications to the south elevation, which is the front elevation of the project.

I brought with me what was previously approved which consisted of a single dormer, a HardiePlank siding over kind of a brick fieldstone along the bottom portion of the frontage here. They wanted to kind of break up the monotony of the siding and the brick. They kind of created a series of textured elevations throughout the frontage here. As you can see, they also added more windows along the frontage. They broke this up into a few additional dormers, which they thought was a little bit more attractive compared to what was initially proposed.

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The east, north and western elevations are all similar. They have the strip of the textured stone along the base and the Hardie board siding along each side.

The trim along the roof line is also similar to what was previously proposed.

It's really the frontage elevation changes that are being contemplated consistent with the initial plan where we had the canopy over this window. All the other canopies that are introduced above the windows all have the standing seam metal roof that we talked about previously.

We think these changes are minor. We think it kind of fits the architecture. We wanted to get concurrence from the Planning Board on these minor amendments.

CHAIRMAN EWASUTYN: Comments from Board Members. John Ward?

2 MR. WARD: I think it looks very  
3 nice. Thank you.

4 CHAIRMAN EWASUTYN: Cliff Browne?

5 MR. BROWNE: I think it's an  
6 improvement over the original design.

7 We just need to make sure that  
8 you submit the architecture materials  
9 and so on for Code Compliance.

10 MR. LAPINE: Okay.

11 CHAIRMAN EWASUTYN: It's a nice  
12 design.

13 MR. LAPINE: Thank you.

14 MR. MENNERICH: Definitely much  
15 improved.

16 MS. DeLUCA: I agree. It just  
17 looks -- I think it will add a nice  
18 touch, even to the neighborhood as  
19 well.

20 MR. LAPINE: I like how it  
21 breaks up the different materials.

22 MR. DOMINICK: Chris, you said  
23 these are minor changes, but this is  
24 major changes. It looks phenomenal.  
25 You really did a great job.

2 MR. LAPINE: The building has  
3 four sides. I'm only changing  
4 twenty-five percent.

5 MR. DOMINICK: The most  
6 important percentage you're changing.  
7 It looks phenomenal.

8 MR. LAPINE: Thank you.

9 CHAIRMAN EWASUTYN: Jim Campbell,  
10 Code Compliance?

11 MR. CAMPBELL: As one of the  
12 members mentioned, you should fill  
13 out a new sheet. This is a blank  
14 that you can take with you.

15 MR. LAPINE: Okay.

16 MR. CAMPBELL: Mail it to the  
17 Chairman.

18 CHAIRMAN EWASUTYN: Pat Hines  
19 with MHE?

20 MR. HINES: We have no comments  
21 on the ARB.

22 CHAIRMAN EWASUTYN: Ken Wersted,  
23 do you have any comments?

24 MR. WERSTED: No comments.

25 CHAIRMAN EWASUTYN: This is a

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Type 2 action.

MR. GABA: SEQRA is complete as far as that goes. If the Board is satisfied with the changes as far as the architectural review goes, and there are no special conditions, we can prepare a resolution.

CHAIRMAN EWASUTYN: Would someone make a motion to grant ARB approval for 42 South Plank Road, Gasland Petroleum?

MR. DOMINICK: I'll make the motion.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Dave Dominick. I have a second by John Ward. Can I have a roll call vote starting with John Ward.

MR. WARD: Aye.

MR. BROWNE: Aye.

CHAIRMAN EWASUTYN: Aye.

MR. MENNERICH: Aye.

MS. DeLUCA: Aye.



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MR. DOMINICK: Aye.

CHAIRMAN EWASUTYN: Motion carried. Thank you.

MR. LAPINE: Thank you.

CHAIRMAN EWASUTYN: Will you be starting this spring?

MR. LAPINE: They received some comments on their building permit drawings. They're hoping to start as soon as they get their approval. If they could start in March, they would like to start in March.

How many samples of the materials do you need? Just one sample for the Building --

MR. HINES: We just need the form filled out. We don't need the physical samples.

MR. LAPINE: Excellent. Thank you very much. Have a great evening.

(Time noted: 7:05 p.m.)

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

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That hereinbefore set forth is a true  
record of the proceedings.

I further certify that I am not  
related to any of the parties to this  
proceeding by blood or by marriage and that  
I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

NEWBURGH CHICKEN, LLC  
(2023-17)

197 South Plank Road  
Section 60; Block 3; Lot 6.1  
B Zone

----- X

SITE PLAN

Date: February 1, 2024  
Time: 7:05 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
CLIFFORD C. BROWNE  
STEPHANIE DeLUCA  
KENNETH MENNERICH  
DAVID DOMINICK  
JOHN A. WARD

ALSO PRESENT: STEPHEN GABA, ESQ.  
PATRICK HINES  
JAMES CAMPBELL  
KENNETH WERSTED

APPLICANT'S REPRESENTATIVES: NICHOLAS WARD-WILLIS,  
MATTHEW BERSCH & COREY CHASE

----- X

MICHELLE L. CONERO  
Court Reporter  
845-541-4163  
michelleconero@hotmail.com

2 CHAIRMAN EWASUTYN: Item number  
3 2 is Newburgh Chicken, LLC. It's a  
4 site plan located at 197 South Plank  
5 Road in a B Zone. It's being  
6 represented by Keane & Beane.

7 MR. WARD-WILLIS: Good evening,  
8 Mr. Chairman, Members of the Board.  
9 Nicholas Ward-Willis with Keane &  
10 Beane on behalf of the applicant,  
11 Newburgh Chicken. I'm also joined by  
12 our design team, Matt Bersch with  
13 Dynamic Engineering and also Corey  
14 Chase, our traffic engineer, also  
15 with Dynamic Engineering.

16 We last appeared before your  
17 Board in December. Since then we've  
18 received some comments from the  
19 County, from your consultants, your  
20 landscape architect, traffic and  
21 planning engineers. Our plans were  
22 revised in response to some initial  
23 comments we received back in December  
24 from this Board.

25 Just by way of a brief

2 background, this is the project at  
3 197 South Plank Road, the existing  
4 Dairy Queen. We're proposing to  
5 demolish the existing building and  
6 replace it with a Popeyes Chicken.

7 We went before the Zoning Board  
8 of Appeals which issued a special  
9 permit allowing us to continue a  
10 nonconforming use. They also granted  
11 certain variances. They also  
12 confirmed the dimensions of the  
13 building and the setbacks. As it was  
14 a nonconforming use, it's not a use  
15 permitted in the district, so there  
16 weren't any regulations.

17 Based upon comments from this  
18 Board and the other agencies, some  
19 changes were made to the site plan.  
20 We're going to go through those  
21 tonight.

22 At the end, we'd like to and  
23 think we're in a position where we  
24 would ask for a public hearing to be  
25 scheduled for you to consider that

2 request.

3 There weren't any significant  
4 changes. The site plan still looks  
5 the same. In response to comments,  
6 we brought the building closer to  
7 Union Avenue which addressed the  
8 comment about the retaining walls.  
9 Mr. Bersch is going to go through and  
10 explain that.

11 Our changes, however, did result  
12 in the dimensions changing with  
13 respect to what was granted by the  
14 Zoning Board of Appeals. If you  
15 would allow me, before we go into  
16 detail, I wanted to walk you through  
17 some of those, because I think that  
18 will put it into context. We  
19 prepared this chart. I'll walk you  
20 through it.

21 In this chart we set forth the  
22 dimensional requirements that are  
23 required. The existing is the  
24 existing Dairy Queen. The ZBA  
25 approved -- on the top right column,

2 the middle one, that's what was  
3 approved by the ZBA and the site plan  
4 you saw back in December. The  
5 proposal is what we're presenting to  
6 you tonight. The last column shows  
7 what was the change or no change.  
8 Yellow, of course, being no change  
9 where it says, "No change." The  
10 green is where there's a change.  
11 When it says, "Plus 14.9 feet," it  
12 means, for example with number 4, the  
13 minimum front yard setback, the  
14 existing is setback off Route 52, the  
15 existing building, 13.9 feet. We had  
16 proposed previously 77.1 feet. We're  
17 providing a deeper setback now of 92  
18 feet. Not only have we reduced the  
19 nonconformity, we reduced it now so  
20 that we're providing 92 feet of  
21 setback.

22 With respect to items 5 and 6,  
23 the minimum front yard setback along  
24 Route 300, the existing is 25.3 feet.  
25 We had proposed 36.5 due to the

2 request to address the retaining wall  
3 and some other site issues. That has  
4 been reduced to 34.5 feet. It's 2  
5 feet less than what we had  
6 previously, but still about 10 feet  
7 greater than what's there with the  
8 existing building, so still an  
9 improvement.

10 Likewise number 6, minimum rear  
11 yard setback, the existing is 79  
12 feet. We had proposed 118. With the  
13 changes, we're at 116. We dropped it  
14 2.5 feet, but still 40 feet better  
15 than where it is today.

16 The minimum side yard setback,  
17 we've increased that by 3.4 feet.

18 There's no change with respect  
19 to the height.

20 Maximum lot surface coverage, we  
21 were previously at 60.8 percent.  
22 We've now added an additional 60  
23 square feet, so it's at 60.9 percent.  
24 That is more than what is existing,  
25 but there's more of a parking lot and



2 we pushed the building back.

3 The building itself remains the  
4 same size.

5 There's no change in the maximum  
6 building coverage.

7 As you can see, we will need to  
8 go back to the ZBA just to get them  
9 to confirm the two areas where we  
10 have brought it closer to the road  
11 than what was previously approved by  
12 them by 2 feet and 2.5 feet. We  
13 clearly don't think that's  
14 significant. You'll hear from Mr.  
15 Bersch the benefits of what we've  
16 done with the site plan with the  
17 minor change of the building and  
18 bringing the retaining walls further  
19 in, explaining how we're building  
20 those so that these changes should, I  
21 think, be well received by the ZBA,  
22 we would think.

23 The next question that was asked  
24 was, we had provided -- we received  
25 some variances from the Zoning Board

2 of Appeals. How do these changes  
3 affect that? We, again, prepared a  
4 chart to provide you with.

5 We were granted a variance for  
6 loading spaces. One is required. We  
7 had proposed zero. We had explained  
8 that to the ZBA. They granted that.  
9 That's also not changing.

10 Access on South Plank Road,  
11 there's a provision to be 150 feet  
12 away. We were granted a variance,  
13 but we are going to be half a foot  
14 closer.

15 Likewise with respect to the  
16 distance from the building to the  
17 center line on Union Avenue. We're  
18 now going to be 2 feet closer.

19 Likewise with the front yard  
20 abutting on Union Avenue. 2 feet  
21 there.

22 With respect to the freestanding  
23 sign height, it's permitted to be 14.  
24 We received approval for 20. We're  
25 reducing it 3 feet to 17. It doesn't

2 require us going back there. We just  
3 wanted to show that we had reduced  
4 that.

5 We will need to go back to the  
6 ZBA just to get these minor  
7 adjustments with respect to the  
8 variances.

9 MR. HINES: I think you're going  
10 back for all of these changes.  
11 Typically the Zoning Board of Appeals  
12 issues you a decision that identifies  
13 each of these dimensions. Any of  
14 them that change, they'll need to  
15 modify that decision.

16 MR. WARD-WILLIS: Okay. That's  
17 fine. I'm just pointing out that  
18 it's bringing it in closer.

19 MR. HINES: Understood.

20 MR. WARD-WILLIS: I understand,  
21 given the nature of the special  
22 permit use and they've approved those  
23 dimensions, even if we increase it,  
24 you would still want the ZBA to grant  
25 that.

2 The last chart I prepared is the  
3 sign details. We do need to go  
4 through that with the Building  
5 Department, but that will require  
6 some variances. I should just  
7 briefly touch on that. We do need to  
8 speak with the Building Department.

9 With respect to that, we have  
10 five signs -- four signs identified.  
11 One is the freestanding sign that's  
12 been approved by the ZBA. Because of  
13 the changes, you'll see a free-  
14 standing sign is only permitted if  
15 the building and the site is setback  
16 a minimum of 35 feet from the front  
17 property line. Given the changes,  
18 we're now actually at 34.5 feet. We  
19 would need to go to the ZBA to get a  
20 variance. That's shown on the first  
21 page in the right-hand column in red.  
22 So a variance for a half foot.

23 Again, we reduced the free-  
24 standing sign from the approved 20 to  
25 the reduced 17.

2 On the second page, we've gone  
3 through -- again, I won't go into too  
4 much detail, but we've gone through  
5 the building-mounted signs. Six are  
6 proposed. There it's a question of  
7 the total square footage that's  
8 permitted. On the third page you'll  
9 see in red, proposed is 250.9 total  
10 square feet. What is permitted is  
11 87.9. We're requesting a variance of  
12 163 square feet. We would go to the  
13 ZBA for that.

14 The menu board signs, we do need  
15 to discuss that with the Code  
16 Enforcement Office and the Building  
17 Department.

18 The directional signs, we comply.  
19 That is the quick overview of  
20 the signs. Again, we'll discuss that  
21 more with the Building Department.

22 We would appreciate a referral  
23 to the ZBA for the items that we've  
24 discussed tonight. I thought it  
25 would be helpful to walk you through

2 that aspect.

3 Mr. Chairman, at this point,  
4 unless you have questions specific,  
5 I'll ask Mr. Bersch to walk you  
6 through with a high level of review  
7 of some of the changes.

8 CHAIRMAN EWASUTYN: Does the  
9 Board have any questions on the  
10 presentation as far as the need for  
11 variances and the changes from what  
12 was originally approved by the ZBA?

13 MR. BROWNE: No questions.

14 MS. DeLUCA: No.

15 CHAIRMAN EWASUTYN: Okay.

16 MR. WARD-WILLIS: Thank you.

17 MR. BERSCH: Good evening. My  
18 name is Matt Bersch. I'm with  
19 Dynamic Engineering. I'm the project  
20 engineer for this project.

21 The exhibit I have before you is  
22 our site plan rendering. It's dated  
23 2/1/2024. It was prepared by my  
24 office. Essentially this colorized  
25 rendering is a colored version of our

2 site plan and our landscaping plan  
3 from the site plan set that had been  
4 submitted.

5 For orientation purposes, north  
6 is to the right side of the page.  
7 South Plank Road runs top to bottom.  
8 Union Ave is north to south along the  
9 -- across the page on the bottom side.

10 Mr. Ward-Willis gave a great  
11 explanation of the minor changes with  
12 regard to some of the dimensional  
13 criteria and variances, so I'm not  
14 going to get into that. I'm just  
15 going to talk about high-level layout  
16 changes. This probably looks exactly  
17 like what we presented to you last  
18 time, last month. I will explain  
19 some of those minor changes.

20 We rotated the building  
21 slightly. That was a result of a  
22 comment from the Board's engineer and  
23 further discussions with our geo-  
24 technical engineer with regard to the  
25 retaining wall design. The way the

2 wall needs to be constructed, there  
3 needed to be a little bit more space  
4 to the property line or else a  
5 construction easement would have been  
6 needed from the adjacent property  
7 owner. We shifted the entire layout  
8 just slightly. When I say shifted,  
9 it was just rotated a degree or two.  
10 It was very minor. That gave us a  
11 little more space up here, in the  
12 southwest corner of the property,  
13 where that retaining wall is the  
14 highest. By making that change and  
15 moving the retaining wall off of the  
16 property line, it also allowed us to  
17 grade the site a little bit  
18 different. We reduced the retaining  
19 wall height from approximately 11.5  
20 to under 10 feet.

21 One of the other changes is at  
22 the South Plank Road driveway,  
23 previously we had shown a full  
24 movement driveway. Per comments from  
25 the DOT, kind of as expected, we have



2 changed the movements in this  
3 driveway to be a right in/right out.  
4 There is a mountable concrete island  
5 in the center of that driveway  
6 promoting those movements.

7 We've also provided a sidewalk  
8 along both frontages. That wraps the  
9 entire site frontage.

10 We've proposed three-foot stone  
11 decorative knee walls, as I guess a  
12 few other developments in Town have  
13 that and it is a standard. We  
14 provided those knee walls at the  
15 intersection and at the driveway  
16 where they'll be visible to the  
17 passing public.

18 We also added a number of  
19 plantings throughout the development.  
20 That was as a result of comments from  
21 the Board's Landscape Architect. I  
22 believe we've complied with a  
23 majority of those comments.

24 We do have a few more comments  
25 that came in this week that we have

2 no problem with addressing.

3 Similar to the MHE review  
4 letter, we can address the comments  
5 in the engineer's letter as well.

6 Really those are the changes.  
7 Like I said, they're all pretty  
8 minor. This looks pretty much like  
9 what we presented last time. There's  
10 no change to the signage or the  
11 architecturalals that were presented  
12 last time. Really this site as a  
13 whole, I feel like it is a little bit  
14 of an upgrade over what's out there  
15 today, just moving the building back  
16 off the roadway, off of the property  
17 line really, really channelizing the  
18 driveways and interior circulation so  
19 you don't have cars backing out into  
20 the roadway, as I understand that's  
21 what happens out there today.

22 Overall I do feel like we've  
23 made some positive movement with the  
24 site, and I welcome any questions.

25 CHAIRMAN EWASUTYN: Questions

2 from Board Members?

3 MR. DOMINICK: Nothing further.  
4 Nice job. I appreciate you taking  
5 the comments and addressing most of  
6 them.

7 MR. BERSCH: Thank you.

8 MS. DeLUCA: Nothing further.

9 MR. MENNERICH: Just one  
10 question. In talking to the DOT, has  
11 there been discussion about a right-  
12 hand turn off of Route 52 onto Route  
13 300?

14 MR. BERSCH: We do have our  
15 traffic engineer who can come up and  
16 speak to those movements and those  
17 comments.

18 MR. BROWNE: The retaining wall,  
19 do you have materials for that yet?  
20 How is that going to be constructed?

21 MR. BERSCH: We anticipate that  
22 the retaining wall will be a recon  
23 gravity block wall, so large blocks.  
24 It's not fully designed yet. We'll  
25 probably wait until we get Board

2 approval before moving forward with  
3 that full retaining wall design. It  
4 has been reviewed enough that we're  
5 confident that the design will work  
6 and it can be constructed in the  
7 space. It will be a block wall. It  
8 will be decorative. It will be nice.  
9 It's not going to be an eyesore of a  
10 wall.

11 MR. BROWNE: That's what I was  
12 looking for.

13 MR. BERSCH: The landscape  
14 architect had provided us with  
15 comments to provide additional  
16 plantings at the base of the wall,  
17 which we've done. There was another  
18 recent comment requesting a few more  
19 plantings on the south side of the  
20 bottom of the wall. We'll be doing  
21 that as well.

22 MR. BROWNE: The side facing  
23 toward you, how high is that  
24 elevation there?

25 MR. BERSCH: So it's approximately

2 -- the wall is just under ten feet at  
3 its highest point right behind the  
4 trash enclosure. It slowly gets a  
5 little bit smaller as you approach  
6 the roadway.

7 MR. BROWNE: Thank you.

8 MR. WARD: With the sidewalk, do  
9 you have it nine feet or eight feet  
10 short of the driveway there? Can you  
11 extend it up to and finish it off to  
12 the driveway and make it ramped?

13 MR. BERSCH: It's technically  
14 outside of the property frontage. I  
15 can't necessarily agree to that as it  
16 would be in front of CVS's property  
17 boundary. I don't know that we have  
18 the ability to agree to do that.

19 MR. WARD: If you can, look into  
20 it, please, to try to continue it.  
21 It looks like a space in between.

22 Another thing was with the  
23 signage, with your sign, Orange  
24 County Planning mentioned having a  
25 monument sign there. Personally I

2 think that's better as a visual to  
3 the property and all than a pole  
4 sign.

5 MR. BERSCH: Understood. We can  
6 certainly evaluate a monument sign.  
7 It's not a prototypical sign package.  
8 It's not something that they do  
9 often. They do need that visibility  
10 from a little bit of a distance as  
11 vehicles do approach the site. A  
12 monument sign with the grade change  
13 and knee walls here, it's going to  
14 get -- I think visibility is going to  
15 start to get a little bit difficult  
16 if we were proposing a monument sign,  
17 especially setback as far as it is  
18 off the property line. It's  
19 certainly something we can consider  
20 and speak to the engineer about.

21 MR. WARD: I'll let Ken handle  
22 talking about that with the visual.  
23 Thank you.

24 CHAIRMAN EWASUTYN: Do you want  
25 to talk about traffic?

2 MR. CHASE: Sure. Good evening.  
3 Corey Chase with Dynamic Traffic.

4 As Mr. Bersch mentioned, the  
5 primary improvements to the site  
6 access and circulation were  
7 restricting the driveway on South  
8 Plank Road to be right in and right  
9 out whereas we previously had shown  
10 full movement access, and the  
11 addition of the sidewalk along both  
12 street frontages.

13 Since the time we were last  
14 here, we did have the opportunity to  
15 prepare a detailed response to  
16 Creighton Manning's comments that  
17 were provided in December. We also  
18 received initial proposal review  
19 comments from New York State DOT. I  
20 will be happy to share those with  
21 Creighton Manning and the Town as  
22 well. We have responded to both of  
23 those comments as well, so those are  
24 currently under re-review by the  
25 department. We're waiting for a

2 supplemental response. We did get  
3 Ken's updated review letter which was  
4 dated January 29th.

5 Largely, I think there's four  
6 additional comments in the letter.  
7 Certainly we can continue to work  
8 with Creighton Manning to address  
9 those comments.

10 Number 4 was noted, which was  
11 brought up earlier, the discussion of  
12 the potential improvements at the  
13 intersection of Route 52 and Route  
14 300. I know Ken mentioned, and I  
15 don't want to comment for him, but  
16 he's going to look into what other  
17 commitments were being made in and  
18 around that intersection to really  
19 get a good idea as to what could  
20 potentially be done. I know we had  
21 previously agreed to dedicate a  
22 right-of-way along the Route 52  
23 frontage to accommodate some widening  
24 in the future. I know those  
25 improvements were set to be done. It



2 may be prudent to have a meeting  
3 between the Town's traffic engineer,  
4 the DOT and our office, as well as  
5 any other interested parties in the  
6 area, to kind of get a handle on  
7 what's going on in the area and what  
8 could potentially be done there as a  
9 result.

10 CHAIRMAN EWASUTYN: Can you  
11 supply us with the correspondence  
12 that you received from the DOT, that  
13 way we'll better understand what's in  
14 progress based upon the recommendations?

15 MR. CHASE: We can. I can  
16 provide you with their comments as  
17 well as our response.

18 CHAIRMAN EWASUTYN: I would  
19 appreciate that.

20 MR. CHASE: Certainly.

21 CHAIRMAN EWASUTYN: Ken Wersted,  
22 do you want to speak on behalf of the  
23 Planning Board?

24 MR. WERSTED: Certainly. Our  
25 previous comments from the first

2 submission have largely been  
3 addressed.

4 We did note that it's a  
5 problematic intersection. I would  
6 say over the last five to fifteen  
7 years, various projects have come and  
8 gone in this area and certain  
9 commitments have been put forward  
10 towards this intersection with  
11 challenges. No one project has the  
12 ability to fix any of them, namely  
13 because none of them have ever been  
14 at the intersection. They have  
15 always been affecting it, but they  
16 have been upstream in different  
17 areas. Myself, working with the  
18 Town's Attorney and Planning Board  
19 Attorney, will look through those  
20 past resolution approvals to see what  
21 has been committed to this  
22 intersection. Right now you're the  
23 first property owner coming to the  
24 table that has frontage on this  
25 corner, so it's an important part to

2 kind of get the ball rolling relative  
3 to those improvements.

4 Anything that stood out from the  
5 DOT comments that would be applicable  
6 or we should understand more about.  
7 I think one of the things I heard was  
8 could you potentially connect to that  
9 CVS driveway that is perpendicular to  
10 Route 300, behind the building.

11 MR. CHASE: The comments were  
12 largely consistent with what you  
13 provided. They had some technical  
14 comments on the traffic study, which  
15 we were able to respond to.

16 Obviously consistent with your  
17 recommendations, the Route 52 access,  
18 they recommended the right in/right  
19 out.

20 They also wanted the sidewalk  
21 extended along both frontages. We  
22 were able to accommodate that.

23 They did ask us to investigate  
24 the potential for interconnecting the  
25 property to the south with the CVS

2 property. As you heard Mr. Bersch  
3 describe, obviously there's a  
4 significant grade change between  
5 those two properties which would make  
6 it very challenging to provide an  
7 interconnection between the two  
8 properties. We explained that to DOT  
9 and certainly what the hindrances are  
10 in being able to achieve that. That  
11 response is currently under their  
12 consideration.

13 MR. WERSTED: Thank you.

14 Coming back to the variance  
15 questions. If there is a dedication  
16 along Route 52, how does that affect  
17 the variances relative to if your  
18 property line moves to provide that  
19 dedication? Is it then a trip back  
20 to the Zoning Board for new variances  
21 or are they kind of grandfathered in  
22 at that point? I don't know the  
23 answer.

24 MR. WARD-WILLIS: It depends on  
25 the Town's practice. My view would

2 be that the project would be approved  
3 with the offer of dedication. DOT  
4 may not accept that dedication now or  
5 until a year later or two years  
6 later, so our project would be deemed  
7 approved and grandfathered in. We'd  
8 have to come back for variances.  
9 It's certainly something you'd want  
10 to take into account as you review  
11 our site plan, that there may be that  
12 taking.

13 MR. WERSTED: Thank you.

14 CHAIRMAN EWASUTYN: Jim Campbell,  
15 Code Compliance?

16 MR. CAMPBELL: As far as the two  
17 packets that you gave us, for the  
18 items in red you will need to go back  
19 to the Zoning Board. I do concur  
20 with those numbers.

21 It's a very detailed form. I  
22 wish everybody did this.

23 Do you have any renderings on  
24 the menu boards and the directional  
25 signs?

2 MR. BERSCH: I don't have  
3 colorized renderings for the menu  
4 boards. We can certainly provide  
5 that, though.

6 MR. CAMPBELL: I can give you my  
7 card. You can send it to the  
8 Chairman. E-mail it to the Chairman.

9 MR. WARD-WILLIS: All right.

10 CHAIRMAN EWASUTYN: That's it?

11 MR. CAMPBELL: That's it. They  
12 addressed my concerns.

13 CHAIRMAN EWASUTYN: Let me stop  
14 and pause for a minute. Any questions  
15 or comments on the presentation for  
16 traffic right now? Do the Board  
17 Members have anything to comment on  
18 or have a question about?

19 MS. DeLUCA: Not at this time.

20 CHAIRMAN EWASUTYN: Thank you.

21 MR. BROWNE: I still have a  
22 major concern on that exit onto 300.  
23 I don't know what you're going to do  
24 with it. It sounds like you can't  
25 really do much of anything. It's

2 going to be a very big challenge for  
3 any motorist coming in and coming  
4 out.

5 MR. CHASE: We certainly took  
6 that under consideration. The goal  
7 was to push the driveway, as Mr.  
8 Bersch mentioned, as far south from  
9 the signal. Obviously, given our  
10 limited frontage on South Plank Road,  
11 it certainly made sense to restrict  
12 that driveway, which again makes  
13 having full access on Route 300 more  
14 important.

15 MR. BROWNE: I know you can't  
16 address bad driving habits, but  
17 that's a problem in that area. Maybe  
18 because of bad driving habits, not  
19 because of the laws and the rules.

20 CHAIRMAN EWASUTYN: John Ward?

21 MR. WARD: No comments.

22 CHAIRMAN EWASUTYN: At this  
23 point we'll turn the meeting over to  
24 Pat Hines with MH&E.

25 MR. HINES: We did provide our

2 comments to the applicant. I know  
3 they have them.

4 We did note that sidewalks have  
5 been provided along the entire  
6 frontage. There's a portion of the  
7 sidewalk that's outside what is now  
8 the DOT right-of-way. Typically DOT  
9 wants them all in or all out. I  
10 don't know if you had that  
11 conversation with them. On the  
12 corner there it dives back into your  
13 site and then back into the  
14 right-of-way.

15 MR. BERSCH: This was provided  
16 to them. I think we're still waiting  
17 for any sort of comment back. We did  
18 it to avoid equipment, DOT equipment  
19 that was out there.

20 MR. HINES: Understood. You'll  
21 have to work that out with them.

22 We requested the status of the  
23 DOT right-of-way. I do have a  
24 concern that DOT may want dedication  
25 parcels along here. I think it's



2 going to impact your ZBA application  
3 for those setbacks. I think we need  
4 to determine those. If DOT is going  
5 to require that dedication, then you  
6 can get the variances that you need  
7 based on that plan. I don't know if  
8 the ZBA wants to see you a third  
9 time. It will be their policy that  
10 if that changes, you will go back to  
11 them. I think some additional  
12 information before you go to the ZBA  
13 from the DOT would help your cause as  
14 you move forward.

15 MR. WARD-WILLIS: Thank you.

16 MR. HINES: We noted that your  
17 response letter deferred some things,  
18 the water main in Route 52, the  
19 stormwater estimates, the full  
20 retaining wall design until building  
21 permit, which is typical, and then  
22 the tree preservation plan. There's  
23 not a lot of trees on this site, but  
24 we do have that ordinance, Chapter  
25 172 of the code. That needs to be

2 addressed. We'll be looking for that.

3 We did, since these comments  
4 were written, receive Orange County  
5 Planning comments which were advisory  
6 in nature.

7 The Board did discuss their  
8 request for the monument sign, which  
9 we would like addressed. It may not  
10 be possible. It may obstruct some  
11 views there as a monument sign where  
12 your proposed sign is 17 feet, it  
13 won't obstruct the view. If you can  
14 take a look at that.

15 We have a comment on the water  
16 main layout. I provided you with the  
17 detail. We don't use those hot box  
18 designs that you had there. It's not  
19 a requirement.

20 I noted for the Board's use that  
21 your light fixtures are 18 feet high,  
22 which are a little bit higher than  
23 our standard pedestrian size of 16  
24 feet. For the nature of the area  
25 it's located in, I don't have an

2 issue with the 18 feet, as long as  
3 the Board is fine with it.

4 Architectural review will be  
5 required.

6 Your current sign on your detail  
7 says 20 to 25 feet high. We'll have  
8 to get that 17-foot sign shown there  
9 on the plans.

10 MR. BERSCH: It's just a mis-  
11 dimension.

12 MR. HINES: I think since you're  
13 going back to the ZBA, we talked at  
14 work session that our public hearing  
15 would be held after you get those  
16 approvals. I'll defer to Mr. Gaba  
17 who is filling in tonight. I think  
18 that's his opinion as well.

19 CHAIRMAN EWASUTYN: Steve?

20 MR. GABA: Yes. The need to go  
21 back to the ZBA for variances is  
22 something that I think has to be  
23 addressed prior to the Planning Board  
24 holding its public hearing. The  
25 whole idea behind a public hearing is

2 to let the public know what the  
3 project is going to look like in its  
4 proposed final state, or as close as  
5 you can come. There are a number of  
6 issues here besides just the  
7 dimensional charts you've been shown  
8 which have to be addressed.

9 I don't agree with counsel that  
10 if there was a dedication to the DOT  
11 in regard to the roadway, that they  
12 would not need to go back for  
13 variances. If there's a taking, if  
14 the state came in and took property  
15 from the domain, then perhaps the  
16 variances that were granted would  
17 stand. If they want to subdivide off  
18 of a lot line change to have land  
19 deeded to the state, especially if  
20 it's contemplated at the building  
21 stage, that's the type of thing the  
22 ZBA is going to require them to come  
23 in and have approved. As Ken and as  
24 Pat indicated, they really should  
25 have some sort of idea of what

2 ultimately is going to happen in  
3 regard to Route 52 there, go in one  
4 more time to the ZBA, get your  
5 variances and then come back before  
6 the Planning Board for a public  
7 hearing on what, hopefully at that  
8 point, will be the final outline of  
9 the site plan.

10 MR. WARD-WILLIS: Mr. Chairman,  
11 I certainly understand the logic  
12 behind it. My concern is not going  
13 -- with not having a public hearing  
14 now, is we go to the ZBA for a second  
15 time, or maybe a third time if DOT  
16 isn't timely, then you hold the  
17 public hearing and someone raises a  
18 comment that requires a tweak or a  
19 modification to the plan. Given that  
20 you don't have dimensional  
21 requirements, it's a grandfathered  
22 use, if we move something that alters  
23 it by a half a foot, as seen on this,  
24 then we have to go back to the ZBA  
25 for a third or a fourth time. At

2 least by having the public hearing,  
3 even if you continue it but don't  
4 close it, it allows for us to receive  
5 some initial comments from the public  
6 who might have comments and at least  
7 know we've addressed that. We, of  
8 course, would have a continuation. I  
9 would like those comments or any more  
10 comments from the Board. We would be  
11 going to the ZBA with a firmer, more  
12 established site plan than going  
13 there and then coming back and having  
14 the potential to go back and play  
15 another game of ping-pong.

16 CHAIRMAN EWASUTYN: There is a  
17 timeframe, I'll let Steve speak on  
18 that, with a public hearing. Even if  
19 we were to -- can we do it? Can we  
20 possibly have a public hearing and  
21 keep the public hearing open to  
22 receive some comments?

23 Pat Hines, Steve Gaba, what's  
24 your opinion.

25 MR. HINES: I think I'll defer

2 to Steve. There's a 62-day timeframe  
3 when you close it.

4 MR. GABA: When you close it.  
5 If they held it open, then the 60-  
6 day timeframe wouldn't run. I've got  
7 to tell you, though, I get counsel's  
8 point, but it's always the case when  
9 someone comes to you and you have a  
10 public hearing, there may be a  
11 comment that would require them to go  
12 back to the ZBA. They know they need  
13 to now. Let them go and get what  
14 they feel is what they want as their  
15 final plan and come and present it to  
16 you. If it turns out, lo and behold,  
17 there's one more thing they have to  
18 go for, that's the nature of land  
19 development. I don't see this case  
20 being different than any other one  
21 that comes before you.

22 MR. WARD-WILLIS: The only thing  
23 that makes it a little different, if  
24 I may, is that for other uses that  
25 come before you, your zoning code

2 sets forth the dimensional setbacks  
3 and requirements. Because we have  
4 the special permit for the  
5 nonconforming use, the ZBA sets the  
6 site plan and sets those dimensions.  
7 When there's an application that  
8 complies with it, it's a permitted  
9 use in the district, we know what  
10 those dimensions are, you design to  
11 it, and it's only as a result that  
12 you have to get a variance because  
13 someone -- there's a change at the  
14 public hearing level. I agree with  
15 counsel, this is a little different.  
16 We don't have a checklist to look at.  
17 What we go to the ZBA with is, in  
18 essence, those dimensional setbacks.  
19 There's a little bit of a difference  
20 here. It's not your typical case.

21 CHAIRMAN EWASUTYN: Good point.

22 I'll put it up for discussion  
23 with Board Members since they do have  
24 the final decision. We get  
25 recommendations from our consultants,



2 but it's the Planning Board that has  
3 the final decision. Dave Dominick?

4 MR. DOMINICK: I would take the  
5 Planning Board Attorney's advice.

6 CHAIRMAN EWASUTYN: Stephanie  
7 DeLuca?

8 MS. DeLUCA: I understand his  
9 point -- counsel's point of view as  
10 well. I'm on the fence with it.

11 CHAIRMAN EWASUTYN: Ken Mennerich?

12 MR. MENNERICH: I think it can  
13 work either way. I would have to  
14 take Steve's advice.

15 CHAIRMAN EWASUTYN: I'm in favor  
16 of having the public hearing, keeping  
17 it open with the understanding that  
18 there are no guidelines as far as the  
19 setbacks. You're in a difficult  
20 position because you can't design  
21 based upon what would be required.  
22 You're at a disadvantage. I'm  
23 willing to be flexible on the matter.  
24 I'm only one member.

25 MR. WARD-WILLIS: Understood.

2 Thank you.

3 MR. BROWNE: I would prefer you  
4 go to the ZBA now and do what you  
5 have to do. This particular project,  
6 I would really be hard pressed to  
7 think there would be any kind of a  
8 change as a result of a public  
9 hearing. I just don't see that.  
10 Obviously it can happen. I think  
11 it's really out there as far as the  
12 possibilities. I don't think it's  
13 practical thinking. I'd prefer that  
14 you would go get things in place.

15 MR. WARD: I agree with what  
16 Cliff says and what the attorney  
17 says, the Town attorney. Chances  
18 are, with the public hearing, you've  
19 shown as far as we see. The public  
20 might have input. To go that far, I  
21 say wait until after you're back.  
22 Thank you.

23 MR. WARD-WILLIS: I appreciate  
24 it. I don't like losing, but I  
25 appreciate it. Thank you very much

2 for the consideration.

3 One thing I would ask, if we're  
4 going to the ZBA, is the Board  
5 accepting of -- not bound. We're  
6 coming back to you. I'd like to at  
7 least know that what we're going to  
8 the ZBA with from your Consultants  
9 and Board Members, the setbacks, the  
10 building location, the walls and  
11 everything, what you see on the site  
12 plan, you're conceptually good with.

13 CHAIRMAN EWASUTYN: I think  
14 there's some language that might not  
15 be accurate. I think the language  
16 is, is the Board willing to say that  
17 they're favorable with the conceptual  
18 plan that's before them tonight?

19 MR. DOMINICK: Yes.

20 MS. DeLUCA: Yes.

21 MR. MENNERICH: Yes. With the  
22 review of what's taken place since  
23 our first meeting, certainly I think  
24 it's a yes.

25 CHAIRMAN EWASUTYN: I'm in favor

2 of the concept plan. Favorable  
3 consideration of the concept plan  
4 that's been presented this evening.

5 MR. BROWNE: I agree.

6 MR. WARD: I agree, as long as  
7 you follow up with the comments that  
8 we said.

9 MR. WARD-WILLIS: Understood.  
10 Yes.

11 CHAIRMAN EWASUTYN: Who will  
12 prepare the letter, the referral  
13 letter to the Zoning Board of Appeals?

14 MR. HINES: Typically Dominic  
15 Cordisco's office would do that. We  
16 have an extensive list. If he could  
17 work with Mr. Willis's office.

18 I do have the concern that I  
19 think we need DOT input on any  
20 potential property transfer to DOT to  
21 get a real handle on what those are.

22 CHAIRMAN EWASUTYN: That would  
23 be part of the referral to the Zoning  
24 Board of Appeals, to have that noted  
25 at the early stages.

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My question is, are you going to prepare the referral letter to the Zoning Board of Appeals?

MR. HINES: I can work with Dominic, yes.

CHAIRMAN EWASUTYN: Fine. Thank you.

Any other questions?

MR. WARD-WILLIS: No. Thank you very much for your consideration tonight.

(Time noted: 7:40 p.m.)

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

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That hereinbefore set forth is a true  
record of the proceedings.

I further certify that I am not  
related to any of the parties to this  
proceeding by blood or by marriage and that  
I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

PERUGINO TWO-LOT SUBDIVISION  
(2024-02)

Mountain View Avenue & Travis Lane  
Section 14; Block 1; Lot 150.2  
RR Zone

----- X

TWO-LOT SUBDIVISION

Date: February 1, 2024  
Time: 7:40 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
CLIFFORD C. BROWNE  
STEPHANIE DeLUCA  
KENNETH MENNERICH  
DAVID DOMINICK  
JOHN A. WARD

ALSO PRESENT: STEPHEN GABA, ESQ.  
PATRICK HINES  
JAMES CAMPBELL  
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: JOHN NOSEK

----- X

MICHELLE L. CONERO  
Court Reporter  
845-541-4163  
michelleconero@hotmail.com

2 CHAIRMAN EWASUTYN: The third  
3 item of business this evening is  
4 Perugino Two-Lot Subdivision. It's  
5 an initial appearance. It's on  
6 Mountain View and Travis Lane. It's  
7 in an RR Zone. It's being  
8 represented by Nosek Engineering.

9 MR. NOSEK: Good evening, Board  
10 Members. For the record, John Nosek,  
11 Nosek Engineering, representing  
12 Perugino on the application for a  
13 proposed two-lot subdivision.

14 This property is at the  
15 intersection of Mountain View Avenue,  
16 here, and Travis Lane, which is a  
17 dead-end cul-de-sac, here. The  
18 property is 9.5 acres.

19 What we're looking to do, we're  
20 proposing to do is to subdivide off a  
21 2.6 acre parcel that would have  
22 access off of Travis Lane. That lot  
23 would have a single-family home with  
24 its own well and septic system.

25 We did do our soils testing.



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The soils in this area here will support a septic system.

The lot will have access onto Travis Lane. It is proposed to have access onto Travis Lane.

I think that pretty much sums it up.

There was a comment in Pat's letter to discuss this fenced area here. Mr. Travis, the owner of the property, he plants corn in this area. It's kind of like a cornfield. That's pretty much why it's fenced off there.

There are no structures on the property. It's a vacant piece of property.

That's basically what we're looking to do.

Very quickly, there is a change of zone, the zone line. The back property line is kind of proposed at that line, the front portion being RR which requires 2 acres. The AR Zone

2 I think is a little less restrictive.  
3 It might be 1 acre. Our parcel is  
4 proposed to be 2.6 acres. There's no  
5 need for any variances or anything  
6 like that.

7 CHAIRMAN EWASUTYN: I'll start  
8 with John Ward. John Ward?

9 MR. WARD: No comments.

10 CHAIRMAN EWASUTYN: Cliff Browne?

11 MR. BROWNE: No comments.

12 CHAIRMAN EWASUTYN: Ken Mennerich?

13 MR. MENNERICH: No questions.

14 CHAIRMAN EWASUTYN: Stephanie  
15 DeLuca?

16 MS. DeLUCA: I want to refer to  
17 Pat with a comment that he had made.

18 CHAIRMAN EWASUTYN: What was the  
19 comment?

20 MS. DeLUCA: The Chadwick Lake  
21 Reservoir, the critical environmental  
22 area.

23 CHAIRMAN EWASUTYN: Which makes  
24 it what type of action?

25 MR. NOSEK: Type 1.

2 CHAIRMAN EWASUTYN: I was asking  
3 Stephanie.

4 MS. DeLUCA: Type 1.

5 CHAIRMAN EWASUTYN: Thank you.  
6 Dave Dominick?

7 MR. DOMINICK: Nothing further.

8 CHAIRMAN EWASUTYN: Pat Hines,  
9 do you want to discuss with why it's  
10 a Type 1 action?

11 MR. HINES: The Town of Newburgh  
12 is one of the three municipalities in  
13 Orange County that have a critical  
14 environmental area approved by the  
15 Department of Environmental  
16 Conservation, this one being the  
17 Chadwick Reservoir and its environs,  
18 as it's entitled. The definition in  
19 our zoning, being in that area makes  
20 the project a Type 1 action. We'll  
21 need a long form EAF prior to doing  
22 the circulations that are required  
23 for the Type 1. Any Type 1 action  
24 has to be submitted to the DEC. The  
25 interested agencies are Orange County

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Planning and the New York State Thruway Authority. We will have to do that circulation. We received a short form, but we'll need a full environmental assessment form.

In addition, Zoning Code Section 185.22 addresses the environmentally sensitive areas, specifically the critical environmental area, and there are a couple items in there that we need addressed on the plans. There's a limitation of 20 percent of the lot area maximum to be disturbed. There are a couple other items under that code. I cited the code section for you, John, so you can address that.

The bulk table needs a minimum habitable area of 1,500 depicted.

We need the septic system designs.

We will send out the adjoining's notice. You're familiar with that. I'll prepare the notice and get you

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the mailings. We have to do that after the first time it appears.

The Board has the option to declare its intent for lead agency subject to my office receiving that long form or you can wait until you receive it and take that action next time.

CHAIRMAN EWASUTYN: Any questions or comments from Board Members?

MR. DOMINICK: No.

MS. DeLUCA: No.

MR. MENNERICH: No.

MR. BROWNE: No.

MR. WARD: No.

CHAIRMAN EWASUTYN: Would the Board be comfortable with declaring our intent for lead agency with the understanding that Pat Hines -- I should have a copy of the long form, or additional copies. Send a PDF and I'll circulate that to the Planning Board Members.

2 That being said, would the Board  
3 be willing to declare intent for lead  
4 agency?

5 MR. DOMINICK: Yes.

6 MS. DeLUCA: Yes.

7 MR. MENNERICH: Yes.

8 MR. BROWNE: Yes.

9 MR. WARD: Yes.

10 CHAIRMAN EWASUTYN: Would  
11 someone make that motion?

12 MR. WARD: So moved.

13 MR. BROWNE: Second.

14 CHAIRMAN EWASUTYN: I have a  
15 motion by John Ward. I have a second  
16 by Cliff Browne. Can I have a roll  
17 call vote starting with Dave Dominick.

18 MR. DOMINICK: Aye.

19 MS. DeLUCA: Aye.

20 MR. MENNERICH: Aye.

21 CHAIRMAN EWASUTYN: Aye.

22 MR. BROWNE: Aye.

23 MR. WARD: Aye.

24 CHAIRMAN EWASUTYN: A PDF will  
25 work fine.

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MR. NOSEK: I'll get that to you. We'll address Pat's comments and make a resubmission. Thank you.

(Time noted: 7:46 p.m.)

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

I, MICHELLE CONERO, a Notary Public for and within the State of New York, do hereby certify:

That hereinbefore set forth is a true record of the proceedings.

I further certify that I am not related to any of the parties to this proceeding by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February 2024.

*Michelle Conero*

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MICHELLE CONERO

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

----- X  
In the Matter of

DARRIGO SOLAR  
(2019-24)

86 Lakeside Road  
Section 86; Block 1; Lot 96  
R-1 Zone

----- X

SOLAR SITE/MIXED USE

Date: February 1, 2024  
Time: 7:46 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
CLIFFORD C. BROWNE  
STEPHANIE DeLUCA  
KENNETH MENNERICH  
DAVID DOMINICK  
JOHN A. WARD

ALSO PRESENT: STEPHEN GABA, ESQ.  
PATRICK HINES  
JAMES CAMPBELL  
KENNETH WERSTED

APPLICANT'S REPRESENTATIVE: MICHAEL MORGANTE  
and JEFFREY LEASE

----- X

MICHELLE L. CONERO  
Court Reporter  
845-541-4163  
michelleconero@hotmail.com



2 CHAIRMAN EWASUTYN: The fourth  
3 and final agenda item this evening is  
4 Darrigo Solar Farm. It's a solar  
5 site/mixed use plan located in an R-1  
6 Zone. It's being represented by  
7 Jeffrey Lease.

8 MR. MORGANTE: Good evening,  
9 everybody. I'm not Jeffrey Lease,  
10 but I am Michael Morgante. I am the  
11 project engineer for this application  
12 that is before the Board. I think we  
13 all know who Mr. Lease is. He sits  
14 there in the middle of the seats.

15 We're here before the Board  
16 because, essentially, after we  
17 received conditional final approval,  
18 we began our application for this  
19 particular project with the local  
20 utility company. We found out that  
21 there were some capacity issues.  
22 Essentially they can accept about 4  
23 of the 4.5 megawatts of power at this  
24 time. It is anticipated that in the  
25 near future electrical upgrades will

2 be made to the substation and local  
3 utility lines and they can accept  
4 that other half a megawatt. It's  
5 kind of driving our decision to,  
6 unfortunately, have to phase the  
7 project. We're looking at proposing  
8 just this 4 megawatt section over  
9 here that's outlined in blue and  
10 labeled phase 1, then we've got these  
11 two other half megawatt areas that  
12 are broken down into the phase 2  
13 portion.

14 The only other thing we're  
15 proposing as it relates to this  
16 particular plan is we thought it  
17 would be a lot easier, neater and  
18 cleaner to place a fence separating  
19 phase 1 and phase 2. It also  
20 provides, I think, better safety  
21 measures for that little DEC  
22 remediation area that's actually  
23 inside the phase 2 area.

24 We've also updated the  
25 landscaping plans. In my humble

2 opinion, I think the landscaping  
3 plans have improved significantly  
4 from the first set we actually  
5 prepared for this Board.

6 Essentially that kind of  
7 summarizes any changes to the plan,  
8 which are very minimal, the  
9 landscaping, the phasing and the  
10 addition of this one little fence  
11 between the phase 1 and the phase 2  
12 area.

13 I did receive Mr. Hines'  
14 comments as well as some of the  
15 landscaping comments. We won't be  
16 taking exception to any of them.

17 At this point I'll turn it over  
18 to the Board and their Consultants to  
19 ask any questions or review any of  
20 the materials that require me to  
21 answer.

22 CHAIRMAN EWASUTYN: Dave Dominick?

23 MR. DOMINICK: At what point in  
24 the project will the canal be cleaned  
25 out and be serviceable again?

2 Also, the landscaping along 84  
3 to screen the project, when will that  
4 be done?

5 MR. MORGANTE: So in discussions  
6 with Mr. Lease, I think they are  
7 going to begin work on this next  
8 week, the actual cleaning of the  
9 canal, which will include minor  
10 drainage upgrades. We have to  
11 replace ten lineal feet of some pipe  
12 in this location that actually feeds  
13 to a catch basin. We have upgraded  
14 from 12 inches to 15 inches. We'll  
15 also replace the line that comes  
16 across the street on Patton Road and  
17 into that right-of-way area on the  
18 other side. It's anticipated that's  
19 all going to start next week.

20 MR. LEASE: May I say something?

21 CHAIRMAN EWASUTYN: For the  
22 record, you are who?

23 MR. LEASE: I'm sorry. Jeff  
24 Lease for the project.

25 We're going to clean up the

2 swale but not do the improvements  
3 across Patton Road. I'd like those  
4 catch basin improvements to be done  
5 at the time of the entire thing. A  
6 condition of the preliminary approval  
7 was that the swale needed to be  
8 cleaned out, and we need to do that.

9 CHAIRMAN EWASUTYN: Pat Hines,  
10 are you in agreement with that?

11 MR. HINES: We are receiving  
12 drainage complaints from your down  
13 gradient neighbors during recent  
14 storm events. That's the intent of  
15 my comment, is to make sure that work  
16 gets done. Also, the other drainage  
17 improvements are integral to that  
18 swale. You're going to convey that  
19 water there and it's still going to  
20 have nowhere to go.

21 MR. LEASE: Okay.

22 MR. HINES: I think you only  
23 have conditional approval, so I don't  
24 think you can do anything until your  
25 conditions are resolved.

2 MR. LEASE: As part of the  
3 approval -- Jeff Lease -- it did  
4 mention cleaning out the swale. If  
5 you don't want me to do that, I'll  
6 wait until the remaining part and the  
7 project gets going.

8 MR. HINES: I would feel more  
9 comfortable if the underlying farmer  
10 was going to do some improvements on  
11 his farmland at this time and wants  
12 to clean that swale out, not as part  
13 of your project. We can't authorize  
14 you to do work until you have a  
15 stamped plan.

16 MR. LEASE: Great.

17 MR. HINES: Certainly there's  
18 some farming activity there that  
19 could support what you're discussing.

20 MR. LEASE: Okay. All right.

21 CHAIRMAN EWASUTYN: What does  
22 "Okay" mean?

23 MR. LEASE: That he wants me and  
24 I will make sure that the farmer  
25 cleans out the swale. That's what he

2 wants. By the way --

3 CHAIRMAN EWASUTYN: For  
4 conversation --

5 MR. LEASE: Excuse me?

6 CHAIRMAN EWASUTYN: For  
7 conversation, can you give a name for  
8 the farmer rather than saying the  
9 farmer? I'm serious. I'm dead  
10 serious. It's not a joke. It's not  
11 a joke. What is the name of the farmer?

12 MR. LEASE: Dan Darrigo.

13 CHAIRMAN EWASUTYN: Thank you.  
14 For the record. We have a  
15 stenographer here. If someone  
16 questions the record and says the  
17 farmer, no one knows who the farmer  
18 is. As you know, we go around and  
19 introduce individuals. If you're  
20 going to speak on someone, we need to  
21 know their name. Thank you.

22 MR. LEASE: May I have Dan  
23 Darrigo clean out the swale so that  
24 it's free of the leaves and  
25 everything that's there?

2 MR. HINES: I'm suggesting that  
3 the farmer can do farming activities  
4 on his property. The site plan is  
5 not approved at this time.

6 MR. LEASE: Thank you.

7 MR. DOMINICK: Part 2 of my  
8 question, Mike. The landscape  
9 screening along 84 will be part --  
10 when will that be --

11 MR. MORGANTE: I don't know that  
12 we -- I have to take a look at the  
13 sequencing of what's on the plans. I  
14 believe that that area, we can do  
15 that upfront if that's something the  
16 Board is interested in doing.

17 MR. DOMINICK: That's always  
18 been an issue with, especially  
19 myself, screening and cleaning that  
20 site up. That should be, after the  
21 drainage, priority number two.

22 MR. HINES: That's one of my  
23 comments, is let's get a handle on  
24 what is phase 1 and what is phase 2.  
25 It's not clear. I understand there



2 are portions of the solar array that  
3 are "phase 2," but in order to get a  
4 certificate of compliance, we need to  
5 know that everything in phase 1 is  
6 complete and then everything in phase  
7 2 is complete. I think a plan that  
8 shows the landscaping, the drainage  
9 improvements, the stormwater  
10 facilities and such for phase 1  
11 should be depicted, and then a phase  
12 2 plan, if we're doing a phased  
13 approval. Right now we only have one  
14 plan before us and it doesn't  
15 identify what landscaping will be  
16 done in what phase, what the drainage  
17 improvements will be and what the  
18 stormwater improvements will be. I  
19 think it would be clearer if we could  
20 have two separate sheets, phase 1,  
21 phase 1 landscaping. If it's only  
22 all in phase 1, that's fine. I think  
23 it needs to be defined for the Board  
24 to consider the phased planning.

25 MR. MORGANTE: Understood.

2 MR. LEASE: Jeff Lease again.  
3 All the landscaping, all of the site  
4 work, everything will be done in  
5 phase 1. The only thing that will  
6 not happen in phase 1 is the solar  
7 array within the area designated on  
8 the plan. All the landscaping along  
9 84, Patton Road, all the roadways,  
10 all the catch basins and everything  
11 else will be done.

12 MR. MORGANTE: What Mr. Hines  
13 may be asking you to do is take this  
14 blue line and put it all the way  
15 around the entire site except for,  
16 essentially, those two areas, which  
17 would indicate all that work would be  
18 done except for what's in the --

19 MR. HINES: Correct. I can't  
20 see the blue line from here,  
21 obviously. I think there needs to be  
22 a clear definition of what is in  
23 phase 1 and what is in phase 2. It  
24 helps the Planning Board, it helps  
25 the Building Department, it helps

2 during construction.

3 MR. LEASE: May I say something?

4 It would be maybe easier just to  
5 designate what is not in phase 1.

6 It's everything except for the solar  
7 array. If you were to put a blue  
8 circle around the half megawatt and  
9 half megawatt solar array, that's the  
10 only thing that's not included in the  
11 first phase of the plan.

12 MR. HINES: That's fine. As  
13 long as we clearly define it.

14 MR. MORGANTE: We can do that.  
15 That's a good point.

16 MR. DOMINICK: Thank you.

17 MS. DeLUCA: No other comments.

18 CHAIRMAN EWASUTYN: At some  
19 point in time, when Karen and your  
20 landscape architect are in agreement,  
21 we'll have a revised landscape plan?

22 MR. MORGANTE: Correct.

23 CHAIRMAN EWASUTYN: At some  
24 point in time there's going to have  
25 to be a cost estimate that Karen will

2 look at. Correct, Pat?

3 MR. HINES: Correct. For the  
4 landscaping. There's also a cost  
5 estimate for decommissioning that we  
6 would require as well.

7 CHAIRMAN EWASUTYN: Which will  
8 be part of the approval process?

9 MR. HINES: Yes.

10 CHAIRMAN EWASUTYN: Anything  
11 else?

12 MR. HINES: Typical to the  
13 previous conditions, have the  
14 stormwater -- all of the previous  
15 conditions should be continued, the  
16 stormwater securities and inspection  
17 fees, the landscape security and  
18 inspection fees. Those off-site  
19 drainage improvements were included  
20 in those. I don't believe any of  
21 those securities have been posted to  
22 date yet.

23 MR. MORGANTE: Mr. Lease, you  
24 have not posted any bonds or  
25 securities. Is that right?

2 MR. LEASE: No. Only the  
3 landscaping bond. That's it.

4 CHAIRMAN EWASUTYN: That has to  
5 be revised now. That may have to be  
6 revised --

7 MR. LEASE: Okay.

8 CHAIRMAN EWASUTYN: -- because  
9 it's a different plan all together.  
10 Karen had said that the new plan was  
11 significantly different than the  
12 original plan.

13 MR. LEASE: Yes.

14 CHAIRMAN EWASUTYN: That being  
15 the case, I would assume that the  
16 bond amount will change.

17 MR. LEASE: Yes. For the  
18 landscape bond. Right. Not the tree  
19 clearing bond. Yes. Right. There  
20 are more trees and more shrubs.  
21 They've been going back and forth  
22 three or four times between my  
23 landscape architect and Karen. I  
24 thought they had worked out most of  
25 what it was. I spoke to the

2 landscape architect today. Karen and  
3 my landscape architect will speak  
4 next week. They think they can wrap  
5 everything up within the next two  
6 weeks. They're very close.

7 CHAIRMAN EWASUTYN: Any questions  
8 or comments?

9 MR. BROWNE: No.

10 MR. WARD: Help me here. When  
11 we first -- there's a lot of history  
12 here. When we first saw this  
13 project, it was exactly like this,  
14 then he came back and said phase 2,  
15 we can't do that because wherever the  
16 power is going to, they weren't  
17 building it yet and it will take too  
18 much time. Now you're back with day  
19 one. At the same time -- how would  
20 you put it -- nothing has been done  
21 except cutting down trees. You cut  
22 down trees where you weren't supposed  
23 to --

24 CHAIRMAN EWASUTYN: Thank you.

25 MR. WARD: -- in the entrance

2 way going in with the neighbors. I  
3 expect, first thing, replace the  
4 trees where the neighbors had to live  
5 with this project for that long.

6 With the drainage, all that  
7 water, he's going to clean it out,  
8 but at the same time, where is it  
9 going to go? It needs to go through  
10 the pipe underneath Patton.

11 CHAIRMAN EWASUTYN: Patton Road.

12 MR. WARD: Patton Road. You're  
13 talking on cleaning it out, but it  
14 has to go somewhere, and that's part  
15 of the project. That's what I'm  
16 saying.

17 CHAIRMAN EWASUTYN: It's been a  
18 slow, difficult project. I think the  
19 difficulty was -- they had the right  
20 to do it -- the clearing of the  
21 property so many years earlier. That  
22 always creates an eyesore in the  
23 community, because, number one, it's  
24 a shock to begin with, and then it  
25 lays dormant for that long a period

2 of time. It doesn't benefit anyone.  
3 It really doesn't.

4 MR. LEASE: Right.

5 CHAIRMAN EWASUTYN: With that  
6 being said, you are moving forward at  
7 this particular time?

8 MR. LEASE: Yes.

9 CHAIRMAN EWASUTYN: Okay.

10 MR. MORGANTE: I do have one  
11 other comment or question, I think it  
12 was on Mr. Hines' comment letter,  
13 whether or not the plan needs to get  
14 referred to County. I guess I'd look  
15 to counsel providing some guidance on  
16 that.

17 MR. GABA: Phasing in and of  
18 itself does not require referral to  
19 County Planning unless the  
20 landscaping represented a substantive  
21 change to the project. There's no  
22 legal requirement to send this back  
23 to County Planning. How the Board  
24 views the landscaping changes, they  
25 could voluntarily send it back if



2 they wanted to. I really don't have  
3 a feel for the extent of the  
4 landscaping changes proposed here, so  
5 I can't tell you how the Board feels  
6 about that.

7 MR. MORGANTE: My understanding  
8 is we have more landscaping.

9 MR. LEASE: Yes.

10 MR. MORGANTE: I think it's  
11 actually been an improvement. The  
12 plans have been improved over the  
13 condition they were in before.

14 MR. LEASE: It's following the  
15 guidelines that Karen Arent wanted.

16 MR. MORGANTE: My understanding  
17 would be we wouldn't need a referral  
18 back to the County.

19 CHAIRMAN EWASUTYN: I'll poll  
20 the Board Members.

21 Dave, do you want to refer this  
22 to the Orange County planning  
23 Department because of the  
24 landscaping? Do you want to accept  
25 the changes as being minor?

2 MR. DOMINICK: I'll accept the  
3 minor changes.

4 CHAIRMAN EWASUTYN: Stephanie  
5 DeLuca?

6 MS. DeLUCA: I agree, accept the  
7 minor changes.

8 MR. MENNERICH: Agreed.

9 CHAIRMAN EWASUTYN: Agreed.

10 MR. BROWNE: Same.

11 MR. WARD: Agreed.

12 MR. MORGANTE: So I'll make plan  
13 changes, we'll clean it up. We'll  
14 see you at next month's meeting  
15 hopefully.

16 CHAIRMAN EWASUTYN: Next where?

17 MR. MORGANTE: At the next  
18 available meeting.

19 CHAIRMAN EWASUTYN: The next  
20 available meeting.

21 MR. MORGANTE: Thank you very  
22 much for your time.

23 CHAIRMAN EWASUTYN: Again, we  
24 don't know between now -- we've  
25 already began to receive revised site

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plans. Again, the agenda is -- I think we have four new items that we received for the meeting of the 15th.

MR. MORGANTE: Thank you for your time tonight.

(Time noted: 8:02 p.m.)

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

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That hereinbefore set forth is a true  
record of the proceedings.

I further certify that I am not  
related to any of the parties to this  
proceeding by blood or by marriage and that  
I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of February 2024.

*Michelle Conero*  
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MICHELLE CONERO

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

----- X  
In the Matter of

MATRIX I-84 DISTRIBUTION CENTER  
(2022-29)

Modification to the Resolution

----- X

BOARD BUSINESS

Date: February 1, 2024  
Time: 8:02 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman  
CLIFFORD C. BROWNE  
STEPHANIE DeLUCA  
KENNETH MENNERICH  
DAVID DOMINICK  
JOHN A. WARD

ALSO PRESENT: STEPHEN GABA, ESQ.  
PATRICK HINES  
JAMES CAMPBELL  
KENNETH WERSTED

----- X

MICHELLE L. CONERO  
Court Reporter  
845-541-4163  
michelleconero@hotmail.com

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CHAIRMAN EWASUTYN: Pat Hines,  
we have an item.

MR. HINES: The Board discussed  
at work session the letter dated  
today's date, received from Whiteman,  
Osterman & Hanna. They are the  
attorneys for the Matrix I-84  
project. This project was before the  
Board for several months, actually  
probably almost a year, in review.

It was before the Board also for  
a clearing and grading application  
which consisted of a plan which  
involved the entire 60-acre site.  
There are three parcels involved in  
this plan, one of which is owned  
currently by the applicant and two of  
which are subject to lot line changes  
which are under the ownership of the  
Manheim Auto Auction. It may not be  
under that exact name, but the auto  
auction facility to the east.

The applicants have requested of  
the Board a modification to the

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resolution. The resolution originally restricted the clearing and grading, that it could not be undertaken until the lot line change was filed. They're having a longer time period to accomplish that. They are concerned about the conditions that restrict clearing due to the protected bat species. They are requesting the Board to modify, and I believe it's comment number 11, I don't have the resolution in front of me, that restricted the clearing and grading until the lot line change was filed and/or recently upgraded to say if the Town Board would allow them to clear and grade the 20-acre parcel -- 17 acres of the 20-acre parcel that they do own.

During the work session we discussed that. The clearing would be trees and stumps and the grading would be the installation of one of the proposed stormwater management

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facilities along the frontage on 17K. It's a very large stormwater management facility that would serve as a temporary sediment pond for erosion and sediment control during construction and ultimately be converted into a water quality and water quantity control facility.

They are asking, under some tight time constraints, that the Board address the modification to that condition to allow the clearing and grading to proceed based on this revised plan showing the limits of disturbance being generally the property lines on the northeast side of the property and the limits of disturbance based on the grading plan on the west side.

There would be a requirement to post security. I'm suggesting the security be posted for the entire site once. Security in the amount of \$3,500 is typically required by this



2 Board as a policy for clearing and  
3 grading. I have those numbers that  
4 we can get to the applicant's  
5 representatives to post that  
6 security.

7 They do have a temporary access  
8 permit from DOT. It has been  
9 received.

10 I believe they've addressed all  
11 the other conditions with the  
12 exception of condition 11 regarding  
13 the clearing and grading restriction  
14 for filing of the lot line change.  
15 They're looking to have that amended  
16 to allow them to undertake the  
17 clearing and grading on the parcels  
18 that they have ownership of.

19 CHAIRMAN EWASUTYN: So then the  
20 motion would be, subject to posting  
21 the entire security for the site,  
22 \$3,500 per acre?

23 MR. HINES: I would suggest we  
24 leave all the other conditions in  
25 place as they were on the original

2 resolution.

3 CHAIRMAN EWASUTYN: Do you want  
4 to give us the language and move for  
5 that motion?

6 MR. HINES: Change resolution  
7 number 11 to allow the applicant to  
8 undertake clearing and grading on  
9 Section 89; Block 1; Lot 66, which is  
10 under their control, and that the  
11 balance of the clearing and grading  
12 would be held off until such time as  
13 they own the other parcels as part of  
14 their lot line change filing.

15 CHAIRMAN EWASUTYN: Steve, are  
16 you okay with that?

17 MR. GABA: I think he summed it  
18 up nicely.

19 MR. MENNERICH: Pat, when you  
20 say \$3,500, per acre of the land they  
21 own?

22 MR. HINES: I want to do the  
23 entire parcel. I want it posted  
24 once. I can see that happening, that  
25 we're done here so we want to rotate

2 it over here. It's cleaner to post  
3 it all at once.

4 CHAIRMAN EWASUTYN: Would  
5 someone make a motion subject to the  
6 recommendations stated by Pat Hines  
7 with MH&E?

8 MR. WARD: So moved.

9 MR. DOMINICK: Second.

10 CHAIRMAN EWASUTYN: I have a  
11 motion by John Ward. I have a second  
12 by Dave Dominick. Can I have a roll  
13 call vote starting with John.

14 MR. WARD: Aye.

15 MR. BROWNE: Aye.

16 CHAIRMAN EWASUTYN: Aye.

17 MR. MENNERICH: Aye.

18 MS. DeLUCA: Aye.

19 MR. DOMINICK: Aye.

20 CHAIRMAN EWASUTYN: Cliff Browne  
21 won't be at the next meeting.  
22 Hopefully he'll be at the following  
23 meeting.

24 Is there anyone here who  
25 believes they won't be at the meeting

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of the 15th?

(No response.)

CHAIRMAN EWASUTYN: It's something we need to do. Please send me an e-mail.

Would someone move for a motion to close the Planning Board meeting of the 1st of February?

MS. DeLUCA: So moved.

CHAIRMAN EWASUTYN: I have a motion by Stephanie DeLuca.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: A second by Ken Mennerich. A roll call vote starting with Dave Dominick.

MR. DOMINICK: Aye.

MS. DeLUCA: Aye.

MR. MENNERICH: Aye.

CHAIRMAN EWASUTYN: Aye.

MR. BROWNE: Aye.

MR. WARD: Aye.

(Time noted: 8:09 p.m.)

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

I, MICHELLE CONERO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That hereinbefore set forth is a true  
record of the proceedings.

I further certify that I am not  
related to any of the parties to this  
proceeding by blood or by marriage and that  
I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 14th day of February 2024.

*Michelle Conero*  
\_\_\_\_\_  
MICHELLE CONERO