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

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In the Matter of

SECURE PROPERTY MANAGEMENT
(2006-19)

Lakeside Road
Section 28; Block 1; Lot 18.2
R-1 Zone

----- X

PUBLIC HEARING
THREE-LOT SUBDIVISION

Date: March 15, 2012
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: VINCENT DOCE &
DARREN DOCE

----- X

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

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MR. BROWNE: Good evening. Welcome to the Town of Newburgh Planning Board meeting of March 15, 2012. At this time I'll call the meeting to order with a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. BROWNE: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. FOGARTY: Here.

MR. WARD: Present.

MR. BROWNE: The Planning Board has professional experts that provide reviews and input on the business before us, including SEQRA determinations as well as code and planning details. I would ask them to introduce themselves at this time.

MR. DONNELLY: Michael Donnelly,
Planning Board Attorney.

MS. CONERO: Michelle Conero,
Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh, Code Compliance Supervisor.

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

MR. COCKS: Bryant Cocks, Planning
Consultant.

MR. BROWNE: Thank you. At this time
I'll turn the meeting over to Joe Profaci.

MR. PROFACI: Please join us in a
salute to the flag.

(Pledge of Allegiance.)

MR. PROFACI: If you have cell phones,
would you please switch them off.

MR. BROWNE: The first item of business
we have this evening is a public hearing. At this
time I'd ask Mike Donnelly to give us a brief
synopsis of the public hearing and its purpose.

MR. DONNELLY: The application for a
public hearing is a subdivision application.
Under New York State law, before a subdivision
can be approved, a public hearing is required.
The purpose of the hearing is to ask the members
of the public to bring to the Planning Board
information or concerns that the Planning Board
may not yet have recognized or the consultants
for the Planning Board have not brought to the

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2 Planning Board's attention. After the applicant's
3 representative gives a presentation, the Chairman
4 will ask those members of the public who wish to
5 be heard to raise their hands to be recognized.
6 We'd ask you to please direct your attention --
7 your comments to the Board and the Chairman will
8 ask a consultant or the applicant's
9 representative to answer any questions that can
10 easily be answered.

11 MR. BROWNE: Thank you.

12 The first item of business is Secure
13 Property Management, project number 2006-19. This
14 is a public hearing for a three-lot subdivision
15 being presented by Doce Associates.

16 Before we actually get to the
17 presentation, I'd ask Ken Mennerich to read us
18 the notice of hearing.

19 MR. MENNERICH: "Notice of hearing,
20 Town of Newburgh Planning Board. Please take
21 notice that the Planning Board of the Town of
22 Newburgh, Orange County, New York will hold a
23 public hearing pursuant to Section 276 of the
24 Town Law on the application of Secure Property
25 Management for a three-lot subdivision on

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2 premises 380 Lakeside Road in the Town of
3 Newburgh, designated on Town tax map as Section
4 28; Block 1; Lot 18.2. Said hearing will be held
5 on the 15th day of March 2012 at the Town Hall
6 Meeting Room, 1496 Route 300, Newburgh, New York
7 at 7 p.m. at which time all interested persons
8 will be given an opportunity to be heard. By
9 order of the Town of Newburgh Planning Board.
10 John P. Ewasutyn, Chairman, Planning Board Town
11 of Newburgh. Dated February 28, 2012."

12 MR. BROWNE: Thank you. Frank Galli,
13 the mailings?

14 MR. GALLI: The notice of hearing was
15 published in The Mid-Hudson Times and The
16 Sentinel. The applicant mailed out seventeen
17 notices and eight were received back. Everything
18 is in order.

19 CHAIRMAN EWASUTYN: Vince, would you
20 give your presentation, please.

21 MR. VINCENT DOCE: My name is Vince
22 Doce, I'm here with my son, Darren. We have an
23 engineering and surveying business located here
24 in the Town of Newburgh on Route 52.

25 We're here to represent Secure Property

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Management for a three-lot subdivision located on a ten-acre parcel on Lakeside Road in the R-1 Zone.

Just to orient you quickly, the property surrounding this is DeNovi, Cinnante, Hess, Sandcastle Homes, Sandcastle Homes, Distano, Losgar and Abrams. The property is in an R-1 Zone and was before the Board several years ago for a six-lot subdivision on this same parcel of property, and it had appeared before the Board as a public hearing. It was being pursued for some final approvals from several agencies, and they were forthcoming, and at that time the owners decided that the real estate market had changed so drastically and what people were looking for had changed so drastically, particularly in the Orange Lake area, that they decided a six-lot subdivision was no longer warranted, and they decided to essentially combine lots.

The previous subdivision is on the Board before you. You can see it's one, two, three, four, five, six. Essentially what is being done now is every two lots are being combined

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into one lot so that these two lots are now one lot. A little bit has been added to that lot, and I'll explain why in a moment. These two lots here are combined into a single lot that's of this configuration. It takes a little bit of a lot here. There are two lots here. That is being split like that, so that is also one lot.

Now, the reason why the lines didn't strictly follow the lot lines of the previous lots when they were combined is that, since we were making them into larger lots, we felt it would be important to follow existing stonewalls wherever we could, and that's why that lot line is not here but here, this one is not here but here. Essentially it's combining two lots.

The two front lots will be served by Town sewer, Town water; the rear lot by Town water and an individual septic system. The reason for the individual septic system is this lot is so far away from where the sewer line is and so far away from the lake and on the downhill side of the property, that it really didn't make much sense to connect it to the sewer -- the existing sewer line. At the time we presented it

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to the Board several weeks ago we had proposed that all lots as exists today, all lots will have frontage on Lakeside Road. To cut down the number of cuts onto Lakeside Road, it was decided that we would request that two lots, at least, be on a common drive. In discussions with the Board we indicated it would be acceptable to us to have a third lot on the common drive, and that has -- those requests have been sent to the Town Board who has to approve them, outside user for two lots for sewer and three lots on a common drive. We are rather ambivalent about it, whether we have a cut directly for lot 1 onto Lakeside Road and these two lots being on one drive or whether all three lots go on that drive.

The plans had been reviewed by the Town consultants and all of their requests have been met. At the last meeting there were a couple of housecleaning items that they requested. One was to show the building envelopes for each lot, and also I believe that the Board requested us to show where we had dug our deep pits on lot 3, and that has been shown with the soils analysis. I think that was about the limit of the

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housecleaning items they asked for. Was it not?

MR. DARREN DOCE: Yes.

MR. VINCENT DOCE: They have been met.

As is normally done, after this evening, if the Board finds that the plans are in order and approves it, any housecleaning items from tonight plus those few items from the last meeting will be placed on the map. Like I say, from last time they were already placed on the map. They would be submitted back to the consultants and the consultants will make sure that everything is in order before they grant final approval.

I think that's really the important points that you would be interested in. I will be glad to answer any questions you have, or I'm sure the Board will.

CHAIRMAN EWASUTYN: As Mike Donnelly had explained earlier in the meeting, anyone that has any questions or comments, please raise your hand and give your name and your address for the record. Thank you.

MR. ABRAMS: I'm really not clear --

CHAIRMAN EWASUTYN: Sir, if you would tell us your name and your address. Thank you.

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MR. ABRAMS: John Abrams, 370 Lakeside.

CHAIRMAN EWASUTYN: Thank you.

MR. ABRAMS: The one question I had was it sounded like there wasn't a real clarity if there's going to be three houses on one road or two. They hadn't decided if it was going to be a third.

MR. VINCENT DOCE: What we have -- we had proposed two lots on one drive, one going out to Route -- to Lakeside Road, but if the Board had requested us or showed that they were in favor of it, we would make all three lots on the one private drive. The Board indicated they would prefer us doing that. We have made that application to the Town Board.

MR. ABRAMS: Okay. So the water that will be coming off of that road going onto Lakeside Road, how is that going to be handled?

MR. VINCENT DOCE: That is handled -- when it comes out there, that is handled with a drainage plan that we have submitted to the Town and they reviewed.

MR. ABRAMS: Are both of the houses in the front going to have pump-up stations or are

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they going to be gravity feed?

MR. DARREN DOCE: Gravity feed. They have grinder pumps.

MR. ABRAMS: They have grinder pumps.

MR. VINCENT DOCE: One thing I forgot to mention, the Board had requested -- you'll recall at one time there were several unsightly houses along the front. The Board had requested that those -- that we consider taking those buildings down, and that has been done.

CHAIRMAN EWASUTYN: Sir.

MR. CINNANTE: How are you doing. Tom Cinnante, I live on 6 Max Way. Can you show me where the two houses are going to be? I'm a little confused here.

MR. VINCENT DOCE: What's your name?

MR. CINNANTE: Cinnante. Right here, that's where I live.

MR. VINCENT DOCE: One house there and -- the houses are shaded in brown.

MR. CINNANTE: Okay. And then the wetlands -- I own all this wetland here. The water runs --

MR. VINCENT DOCE: You're on this side.

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MR. CINNANTE: The water runs towards my house. How are they going to address that?

MR. VINCENT DOCE: The wetlands will not be touched in any way except for one driveway.

MR. CINNANTE: I'm watching it now and I'm having a problem with it. When it rains, all winter the water runs towards me. It builds up on my --

MR. VINCENT DOCE: We will not be changing that in any way. We really can't change that. We can't do anything to it. So that's going to be maintained in the same situation it is now.

MR. HINES: The topography is showing a grade break. The water from this site is going in a southerly direction and right at the property line it goes in a northerly direction.

MR. VINCENT DOCE: This water here from -- where is it, Darren?

MR. HINES: Almost to the property line.

MR. VINCENT DOCE: From here it goes this way.

MR. CINNANTE: It's building up and

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building up, and I want to know if you build and you start touching the ground, you're going to --

MR. VINCENT DOCE: I thought you were saying your water was coming in here, are we going to block it in any way.

MR. CINNANTE: The wetlands I'm talking about. I'm watching it rise.

MR. VINCENT DOCE: That will be the same way it is. We're not going to make it so it backs up on you.

MR. HINES: There's a culvert proposed at the wetland crossing.

MR. CINNANTE: So this red line, this is the rock wall?

MR. VINCENT DOCE: That's the rock wall. Those little circles there are the rock wall.

MR. CINNANTE: This house goes here. This is all their property then?

MR. VINCENT DOCE: This is all their property.

MR. CINNANTE: Okay.

CHAIRMAN EWASUTYN: Sir, if you'd give your name and your address.

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MR. GRISWALD: Donald Griswald, 405 Lakeside Road. By building the houses will it increase the runoff from that area that it would wind up going into the wetlands and therefore -- thereby increasing the volume of water in that wetland there?

MR. VINCENT DOCE: There will be no increase that is appreciable to the wetlands. The drainage will be taken care of on site. Water essentially gets to those wetlands as they get now.

Was there anything unusual when you came up with that?

MR. DARREN DOCE: No. We're not above any threshold that would indicate we need water quantity.

MR. CINNANTE: When you put the road in, the water has to go somewhere.

CHAIRMAN EWASUTYN: Tom, just for a sense of order, Donald has the floor now.

MR. GRISWALD: I agree. In other words, if we face -- I'm not quite sure whether we face the same situation. We're across here.

MR. VINCENT DOCE: You're over here?

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MR. GRISWALD: We're on that side. You're putting in a road. Will there be runoff from that road that goes across Lakeside Road and down the property, because we're on a downgrade and there's a tremendous amount of water?

MR. VINCENT DOCE: Darren.

MR. DARREN DOCE: The high point of the property is here. All the runoff will be towards the east and to the wetlands. This wetlands drains southerly --

MR. GRISWALD: Right.

MR. DARREN DOCE: -- essentially to Bushkill Creek down by the firehouse.

MR. GRISWALD: We don't know if it will be that direction because of the slope of the land.

MR. DARREN DOCE: The natural slope of the land now.

MR. GRISWALD: Even with the road.

MR. VINCENT DOCE: Nothing is going across the road.

CHAIRMAN EWASUTYN: Pat Hines is the Drainage Consultant for the Planning Board.

Pat, would you like to comment?

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MR. HINES: When this project was before the Board previously with the eight lots or six-lot subdivision and the construction of a road and other improvements, there was a requirement for some stormwater detention facilities. There were ponds put on the site. With the scaling back of this project and placing the common driveway in lieu of the 24 foot wide road that was previously proposed, the project has now taken itself out of the threshold that requires the stormwater management to be implemented. It only needs a soil erosion and sediment control plan because it's now a residential with less than 5 acres with no construction of any roadways.

We reviewed the drainage on the site and do concur with what the applicant's engineer has just stated, that very little of the site, probably the first 100 feet of the common driveway, is tributary to Lakeside Road. The balance of the site goes in that westerly direction towards those wetlands and then in a southerly direction in that wetland area. There's been pipes proposed to assure the hydraulic

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connection between those wetlands across the driveway on the rear 5-acre lot, but there will be a soil erosion and sediment control plan. It's not likely all the lots will be constructed at the same time, they'll be constructed over time, so very small portions of the site will be disturbed at any one time. Is there a little bit more water from the roofs and the driveway, yes. But not -- on a 10-acre lot it's not a significant increase in volume that would require stormwater management facilities. Again, if those were required there would be a lot more grading and clearing of the lot. It defeats the purpose if you put those in on the smaller subdivisions.

MR. GRISWALD: Another question. Will these three lots comprise the total amount of property that was purchased at the time to delineate the three lots? Originally the property purchased there was approximately 11 acres.

MR. VINCENT DOCE: Is that 11 acres?

MR. DARREN DOCE: One lot in the front.

MR. GRISWALD: Not including the large house that was left. I think it was sold off.

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MR. VINCENT DOCE: Yes, that was what was cut out.

MR. GRISWALD: That was cut out. The remaining property that you have outlined there, does that comprise what's left of that --

MR. DOCE: Yes. That's all that will be used there.

MR. GRISWALD: In other words, there's nothing else that they can -- they're dividing it into three lots and that would be the extent of the development with that eleven acres?

MR. VINCENT DOCE: Yeah. That's the subdivision. If somebody in the future, just like if any one of you wanted to come in and do something to their property, they would have to come back before the Board.

MR. GRISWALD: Resubdivide?

MR. VINCENT DOCE: If anybody in some future -- if the zoning allowed smaller lots or something, anybody, you or anyone else, wanted to come and subdivide their property, they would bring it in before the Board. This subdivision is only for three lots, and that's the intention.

MR. HINES: One of the concerns here is

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because of the fact that they opted for the common driveway waiver, it would be very difficult, and all three properties would have to agree to go forward and construct a road because the limit of the number of houses on a common driveway or shared driveway is two. They're going to the Town Board to get permission to do three to reduce the road cuts, but the Town Board won't allow more than three on a common driveway. It would have to become a private road and be constructed to very different standards. They're limiting themselves for that. It would be difficult to further subdivide any of the lots because a Town approved private road would have to be put in place and all three of the then lot owners would have to agree to the construction of that private roadway. So it's not likely. It could happen but not very likely.

MR. GRISWALD: It appears -- I mean I'm not sure. It appears from looking at it that every piece of property has some road frontage --

MR. VINCENT DOCE: Yes.

MR. GRISWALD: -- on Lakeside Road.

MR. VINCENT DOCE: Yes.

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MR. GRISWALD: For the purpose of --

MR. VINCENT DOCE: Meeting the Town regulations and meeting State statute, you have to have frontage on a road or else you can't subdivide it. Every lot must have its own frontage on a road.

MR. GRISWALD: Even if it's not a manmade road that you're putting in?

MR. VINCENT DOCE: Yeah. This is not a road. This is just a driveway. That would not meet the conditions to allow you to not have frontage on Lakeside Road. You're forced to have frontage.

CHAIRMAN EWASUTYN: Mike Donnelly, would you care to comment on that?

Mr. Donnelly is the Planning Board Attorney.

MR. DONNELLY: Mr. Doce is correct, each property must have frontage on a municipal or a private road. A common driveway is not a municipal or private road. So the way this is configured, each lot has a leg that meets the Town road. So it complies with that requirement.

MR. GRISWALD: If it weren't a private

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road? Suppose it were a Town road?

MR. DONNELLY: Either one.

MR. GRISWALD: If you go down the road, there's Chesterfield housing development.

MR. DONNELLY: The requirement is that each lot in the subdivision has to have access to a State road, a County road, a Town road or a private road shown on a filed map in the Orange County Clerk's office. This is that.

MR. GRISWALD: Thank you.

CHAIRMAN EWASUTYN: Tom, you had another question?

MR. CINNANTE: Yeah. Where exactly is the road going to be put in?

CHAIRMAN EWASUTYN: Vince?

MR. VINCENT DOCE: As it is shown on the map, it's at the crest of the hill. The top part of the hill, that's where it comes out to for the greatest sight distance in both directions, and that's where it is. On the map physically I don't know how you would recognize it immediately. There's nothing out there. I guess there's a telephone pole right there.

MR. CINNANTE: I'm assuming it's where

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that boat is parked.

MR. VINCENT DOCE: Yeah.

MR. CINNANTE: When you put that road in, when it rains the water is going to go downhill. The houses are going to go down. My main concern is the water.

MR. VINCENT DOCE: Yeah. When you say downhill, which direction?

MR. CINNANTE: From Lakeside Road and then you're going to go down.

MR. VINCENT DOCE: It goes down and there's not -- what I was saying before, I said there's no appreciable water that's going to be tributary then to the wetlands area. The two engineers phrased it differently. It doesn't breach any thresholds that makes you do anything beyond what is shown on this map.

MR. CINNANTE: When my backyard ends and their backyard starts or ends, are they going to put trees up to --

MR. VINCENT DOCE: That's whoever buys the property. I don't know what they'll do there.

MR. CINNANTE: Is the builder going --

MR. VINCENT DOCE: We're not the

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builder.

MR. CINNANTE: No, no. I'm just --

MR. VINCENT DOCE: I'm sure they'll do some landscaping but I'm not sure. On lots of this nature that large, usually it's not dictated when you have to do landscaping.

MR. CINNANTE: Are they going to leave like trees up?

MR. VINCENT DOCE: Oh, yeah. Other than removing some for their houses. There's none in the area of the houses, is there?

MR. CINNANTE: I walked back there. I mean me personally, from my neighbor's house to the house that's already there is only about four acres in between.

MR. VINCENT DOCE: 4 acres?

MR. CINNANTE: My neighbor is Boyle. So from his house -- from his house and back to the other house that's in there, there's not much. I'm trying to figure out where you're going to build.

MR. VINCENT DOCE: That lot is going to be 5 acres in size.

MR. CINNANTE: That house gets 5 acres?

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MR. VINCENT DOCE: 5 acres. This lot gets here 3 acres and this one gets 2 acres.

MR. CINNANTE: That's just weird. I walked back there with my neighbor when we got these letters certified and it doesn't look like there's a lot.

MR. VINCENT DOCE: There's 10 acres there.

MR. CINNANTE: Okay.

CHAIRMAN EWASUTYN: The gentleman in the front. Give your name, please.

MR. BOCHMUHL: My name is Al Bochmuhl, I'm here representing the Orange Lake Civic Association. We've had an opportunity to review the plans and we have two comments.

One is in support of the common driveway concept. We think with the traffic that's already on Lakeside Road, that will be a nice improvement. Improvement is not the right word. It would be better to have one single driveway than three driveways.

The second comment is there's two lots proposed to be connected to the sanitary sewer system. I understand the third lot may fall

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outside of the district but the Board would like to see all three lots included in the sewer district, make it a requirement of the approval of some sort. The lake has struggled over the years with contamination and discharge into the lake and we've done a lot to clean the lake up. We would just like to promote that in future development or where we can minimize, as much as we can, any potential discharges. That's my comment.

MR. VINCENT DOCE: I will say that we were very sensitive with what the Orange Lake community felt about this subdivision, and the letter that we were provided for said essentially they would like to see three lots on a private road -- on a private drive, they would like to see the two front lots on Town sewer, that they felt it would be nice to have the third lot but they had no objection to it not being on the Town road. That was our understanding from the letter that was presented. They did not object to that because they also felt it was out of the peripheral areas that would be tributary to the lake. That was our understanding.

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MR. DONNELLY: One point of correction.
None of the lots are in the sewer district.

MR. VINCENT DOCE: That's correct.

MR. DONNELLY: They would need to enter
into --

MR. BOCHMUHL: That was a
misunderstanding on my part. I was under the
impression that the front two --

MR. HINES: They're not petitioning for
outside user status.

MR. BOCHMUHL: Okay.

MS. LAKE: Trisha Lake, 405 Lakeside
Road. All of the lots are septic tanks? One is
on sewer?

MR. VINCENT DOCE: These two are on
sewer.

MS. LAKE: And the other is on septic?

MR. VINCENT DOCE: The one in the back
is on septic.

MR. HINES: They're proposed to be on
sewer. The Town Board has to grant them the
outside user status. Right now they are not
included in that district. They're approaching
the Town Board to request permission to --

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MS. LAKE: And if you don't give permission, then what happens?

MR. HINES: They're going to be coming back here for a re-approval for the potential design of septic systems.

MS. LAKE: Interesting.

MR. VINCENT DOCE: Septic systems would be allowable there. It was that we proposed having them on Town sewer because we felt it would be preferable.

CHAIRMAN EWASUTYN: Additional comments from the public?

Sir.

MR. ABRAMS: John Abrams, 370. One question I have is after this is approved, would then -- could there be some kind of condition that just says that those properties can't be subdivided again? Would there be that possibility or no?

CHAIRMAN EWASUTYN: We can't impose that restriction.

Mike, do we have --

MR. DONNELLY: Under some circumstances, if it were physically impossible

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or the applicant had not done something that could have permitted it, we could put such a restriction on. I think what you've heard, though, is the likelihood of there ever being further subdivision is very slim. You have a common driveway. You couldn't have another lot on a common driveway. All of the landowners would have to get together and re-deed land to yet another one of the lots and then spend the money building a private or a Town road.

MS. ABRAMS: What about an entrance from the other side? There's that whole big property that's -- that big field and then behind that. It could possibly go that way.

MR. DONNELLY: There's a large wetland in the back there as I understand it. I don't know that anything could be built there.

MR. ABRAMS: We have walked back there.

MR. VINCENT DOCE: You mean going through somebody else's property?

MR. HINES: The topography is not conducive to that.

MR. VINCENT DOCE: I can't imagine that would either be practical physically, or it

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certainly wouldn't be practical financially. I mean these --

MS. ABRAMS: There's a road back there.

MR. VINCENT DOCE: These grades get pretty difficult.

MR. ABRAMS: Jenny Lane goes back in the back there.

MR. VINCENT DOCE: Jenny Lane goes where?

MR. DARREN DOCE: Right here.

MR. ABRAMS: It makes an L. It goes like this. Jenny Lane goes here and then back.

MR. VINCENT DOCE: It doesn't get to our property.

MR. ABRAMS: No, but it's close.

MR. DARREN DOCE: Jenny Lane ends in front of Losgar.

MR. VINCENT DOCE: You have to go through somebody's house or something. I don't see where that would be --

MR. DONNELLY: You need frontage, as we talked about before, on the road. You couldn't do it by easement.

MR. ABRAMS: Okay.

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MR. VINCENT DOCE: Physically and financially, it's virtually impossible.

CHAIRMAN EWASUTYN: Donald.

MR. GRISWALD: As a matter of qualification for myself anyway, these are all zoned only for residential use, not commercial use? Am I correct?

MR. DONNELLY: It's the R-1 zoning district. I believe only residential uses are allowed in the R-1 zoning district.

MR. GRISWALD: Only for future in case someone decides they want to put up a dairy queen or something.

CHAIRMAN EWASUTYN: I don't know if you remember, on Lakeside Road there used to be a bakery. That was one well loved and appreciated bakery.

UNIDENTIFIED SPEAKER: However it did not look like a commercial property.

CHAIRMAN EWASUTYN: I don't know. I was too interested in the doughnuts.

UNIDENTIFIED SPEAKER: And the bread was very good. That was in a house.

CHAIRMAN EWASUTYN: I just saw jelly

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doughnuts.

MR. VINCENT DOCE: I'll assure you that we'll camouflage it so well you will not know we're selling beer and stuff out of there. You'd never know.

CHAIRMAN EWASUTYN: At this point I'll turn to the Planning Board Members to see if they have any comments. Frank Galli?

MR. GALLI: No additional comments.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I don't have anything more.

MR. MENNERICH: I have no questions.

MR. PROFACI: No.

MR. FOGARTY: No.

MR. WARD: I had one question and it came up at the work session, plus the Orange Lake Association said it. Have you considered pros and cons with hooking up to the third house?

MR. VINCENT DOCE: Yes, we've looked into it. I don't even think the Town -- in my experience with the Town, they don't like you putting that long of a feed to a private dwelling, particularly when you would have to use

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a grinder pump to get there. I mean it imposes a lot of problems.

MR. HINES: The house is proposed to be over 700 feet back from Lakeside Road.

MR. WARD: Thank you.

MR. ABRAMS: I just wanted to find out, how big a house is going to go onto each of the properties?

MR. VINCENT DOCE: We can't dictate that. That's whoever buys it. I don't know. It could easily handle -- I have to admit to you, it could easily handle a 3,500 square foot house. I mean the lots are that big. We can't tell people what to build there. That's between them and the building department.

MR. GALLI: Pat, isn't the one house on septic designed for a four bedroom only?

MR. HINES: Yes. It can be only four bedrooms but it doesn't dictate the square footage of the house.

MR. GALLI: Right. It could only be single family, it can't be multiple dwellings.

MR. HINES: Yeah. One of my comments we're going to get to is they need a City of

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Newburgh flow acceptance letter. Even the houses that are on sewer in the front, that calculation for sewer, the hydraulic loading will be based on a bedroom count. So it's not likely that those could be duplexes also because of the flow.

CHAIRMAN EWASUTYN: We were having discussion, John Ward. Any further discussions from the Board Members?

(No response.)

CHAIRMAN EWASUTYN: At this point I'll refer to Jerry Canfield, Code Compliance Supervisor. Jerry.

MR. CANFIELD: Just one comment and perhaps a question. With respect to the question of limiting the further subdivision, would it be proper to ask for a note to be added to the plan referencing the Town Board's approval of the three residences on the common driveway, this way at least if there were a further subdivision that came back before this Board, typically this would be referenced and that note would be there to refresh everybody's mind what was presented here? That may be a proper way to handle that.

CHAIRMAN EWASUTYN: Mike Donnelly,

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Planning Board Attorney?

MR. DONNELLY: I normally include it in the resolution tying into that approval. I will add language saying a note to that effect shall be added to the plan presented for signature.

MR. CANFIELD: That's all I have.

CHAIRMAN EWASUTYN: Donald?

MR. GRISWALD: Is it closed?

CHAIRMAN EWASUTYN: In harmony of the Board, we have a motion that's going from Planning Board Members, now the Consultants. I'd like to continue that and then further questions from the audience.

MR. GRISWALD: Sure.

CHAIRMAN EWASUTYN: To segment from one to the other doesn't establish a forum.

Pat Hines, Drainage Consultant?

MR. HINES: We have some outstanding comments. The applicant's representative noted they're on the plans. We didn't receive any new plans prior to the public hearing.

We're looking for the deep test pits for the septic design system on lot 3. The percolation tests were shown and the design was

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based on those. We're just looking for the actual backhoe testing to be added to the plans.

It's a shallow absorption trench system proposed. We're requesting that that be clearly identified on the plan sheets. The details that are shown are appropriate for that but it's kind of a buyer beware, they know there's some additional costs associated with constructing such a septic system.

The three houses on a private driveway would require a Town Board waiver.

There is a small driveway crossing of the Federal jurisdictional wetlands and we're requesting that the amount of material to be placed there be identified at the limits of the actual disturbance to make sure it's less than a tenth of an acre under the nationwide permit.

This requires the outside user agreement from the Town, the driveway waiver, and it will also need a City of Newburgh flow acceptance letter coordinated with that outside user. So the Board can't take any action until that letter is received.

CHAIRMAN EWASUTYN: I think also as a

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housekeeping item, the common driveway, the name needs to be approved by the Town Board.

MR. CANFIELD: That will need to be named for addressing purposes, yes.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: I have a couple comments I want to address. First is for the applicant to demonstrate the residential lot area requirement. That requirement takes away wetland and steep slopes. Just show it on the plans.

In regards to the further subdivision, between the steep slopes in back and the wetlands, I don't think there will be any possible way under zoning more lots would be able to fit in this. I think you would be covered that way.

Basically the crossing Pat just mentioned, the outside user status and a common driveway easement and maintenance agreement will be required.

CHAIRMAN EWASUTYN: Donald, you had a question?

MR. GRISWALD: The common driveway that

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goes through looks as though it, at least from your map, that it comes out directly across from our property. We're 405. I was wondering if there was consideration to move it -- well probably more on your map up or to the right -- so that it comes out on the property line between ours, which is 405, and Brewer, which is 407, so that when people come out and back and forth they're not constantly getting their headlights shining.

MR. VINCENT DOCE: That location is pretty much dictated by the position of optimum sight distance going to either side. There is a telephone pole there right where it was going to be, where the driveway would be coming out. Very close to that telephone pole. To change it I think would take away from where it is, like I say, for it's optimal sight distance for turning in and out.

The other thing is with three lots it's not going to be -- it's not like a Town road that there's going to be a tremendous amount of traffic there.

MR. GRISWALD: Will there be lighting going down your road?

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MR. VINCENT DOCE: No.

MR. GRISWALD: Will there be fire hydrants going down your road?

MR. VINCENT DOCE: No. The fire hydrant, the only one is along the property.

MR. GRISWALD: Lakeside Road.

MR. HINES: The important thing is that it's not a road. The original subdivision had the multiple lots here. That was going to be a large conventional road. This is literally a 12 foot wide driveway. So there is are lights or other utilities being run down that.

MR. GRISWALD: Not to be sarcastic but by making it a smaller road they are not required therefore to put in those?

MR. HINES: Correct. The infrastructure costs are much reduced, which I'm sure was the driving force between reducing the number of lots they had, the cost of constructing the improvements of the sewer lines that were required previously, the roadways, the large wetlands crossing -- there was two large wetland crossings to accommodate the width of the road. This eliminates a lot of that infrastructure that

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was in the previous approval. They were near final -- they had final approval on the previous --

MR. DONNELLY: Preliminary.

MR. HINES: They had preliminary approval on that. They were near approval for that. They're taking a step back and taking several of the houses out of here.

MR. VINCENT DOCE: What essentially happened was if the subdivision were to be six lots, the revenue from the six lots, with all that infrastructure, was just slightly more than the revenue for three lots. So you would be introducing three more lots onto the property with not a lot of benefit financially, a slight financial benefit, and having three more lots on this piece of property. It became, you know, a no brainer. Why not take a little less revenue and have three less lots there.

MR. GRISWALD: Thank you all very much.

CHAIRMAN EWASUTYN: Thank you. Any additional questions?

(No response.)

MR. VINCENT DOCE: I think Mr. Abrams

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wants to implore you to approve this immediately.

MR. ABRAMS: One question I did have was the length of the driveway for the fire company to go all the way down. If that house catches on fire in the back, how are they going to take care of that?

CHAIRMAN EWASUTYN: Jerry Canfield, Code Compliance?

MR. CANFIELD: It's a very long driveway that isn't an improved road or anything. The driveway is approximately 700 to 800 feet. The width of the driveway is accessible for fire apparatus. The jurisdictional department is the Orange Lake Fire District, Dan Leghorn, the company on the corner of 52 and Lakeside. The hose bed carrying capacity in each of their engines, their pumpers, is well over 1,000 feet. They should not have an issue at all with getting water back in there.

MR. ABRAMS: I'm an insurance agent so I have to ask.

CHAIRMAN EWASUTYN: Additional comments from the public or Board Members?

(No response.)

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CHAIRMAN EWASUTYN: Then I'll move for a motion from the Board to close the public hearing on the three-lot subdivision for Secure Property Management.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

(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.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

At this time I'll turn to the Planning Board Attorney, Mike Donnelly, to give us conditions of final approval for the three-lot subdivision for Secure Property Management.

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MR. BROWNE: You can't do that.

MR. DONNELLY: We can do preliminary but we can't do final.

CHAIRMAN EWASUTYN: I'll move for a motion to have Mike Donnelly give a presentation for granting preliminary subdivision approval for Secure Property Management. And the reason why we can't have final is because we have to get a sign off from the City of Newburgh for a city flow acceptance.

MR. DONNELLY: That's correct.

Vince, one question first. What is the current revision date of the plans? I don't seem to have that. I would like to put it in the resolution.

MR. VINCENT DOCE: Is it here?
2/28/12.

MR. DONNELLY: Is that for all sheets? Darren, if you could send me just a list of the sheets with the revision dates.

MR. DARREN DOCE: That's all the sheets. That's for all the sheets.

MR. DONNELLY: The conditions are as follows. We'll need a sign-off letter from Bryant

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Cocks on the items in his memo of March 9th. We'll need one from Pat Hines on the issues raised in his memo of February 10th. We will either need an Army Corp delineation, a permit or proof that this falls within an existing national permit. We'll need a common driveway easement and maintenance agreement satisfactory to me, and that's before the plans are eventually signed. You'll need approval from the Town Board for three lots on a common driveway as well as the name of that common driveway. We will add a note -- the resolution condition will require that you add a map note reciting that approval by date. You'll need a flow acceptance letter and an outside user agreement with the Town Board. You need the highway superintendent's approval for the shared driveway location.

In the original six-lot preliminary resolution there was a condition requiring approval by the New York State Office of Historic Preservation. I don't remember why that was there. Can you fill us in?

MR. VINCENT DOCE: I don't believe that that was necessary.

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MR. DARREN DOCE: It was a requirement from the DEC because we were going for a sewer extension so they wanted to, I guess, cross all their Ts, dot all there is. We did get it.

MR. DONNELLY: You have a letter?

MR. DARREN DOCE: Yeah.

MR. VINCENT DOCE: We had that. The reason I say it's not necessary is that it's only required when one agency, because of their approval, refers another agency.

MR. DONNELLY: As long as you have it, I'll leave it here and you just submit the letter and then we have it.

We're going to carry a condition that requires the clearing limits be clearly marked in the field before construction of homes begins. That area should include enough area around the existing trees to protect the root system. Finally, there's a requirement that you pay a fee in lieu of parkland for each lot in the amount of \$2,000 for a total of \$6,000.

CHAIRMAN EWASUTYN: Michael, I think we also have to add that they need Town Board approval for a common drive road name.

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MR. DONNELLY: I put that in. They do.

MR. GALLI: Jerry has a question.

MR. CANFIELD: Mike, did you say limits of clearing --

MR. DONNELLY: Yes.

MR. CANFIELD: -- was indicated? Could we have that reflected on the drawings themselves?

MR. VINCENT DOCE: I beg with your pardon?

MR. CANFIELD: The limits of clearing.

MR. DARREN DOCE: They're on the erosion control plan I believe.

MR. GALLI: Pat might not have the new plans.

MR. DARREN DOCE: No, they're not. Okay. The silt fences are.

MR. CANFIELD: It doesn't show it here.

MR. HINES: The previous subdivision had because there were so many lots.

MR. DOCE: They're all on this revised one of 2/28. Right, Darren?

MR. DARREN DOCE: Right.

MR. CANFIELD: We haven't seen this.

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MR. VINCENT DOCE: The reason why, as I said before, we usually wait until after today's meeting to see if there's anything additional.

Mike, you lost me on one thing. On the wetlands, you're saying you want something from us saying that it doesn't meet -- it's only a notification procedure since it's under a tenth of an acre?

MR. HINES: Similar to my comment. We just want the square footage of the wetland depicted to prove that it's under the nationwide permit.

MR. VINCENT DOCE: Okay.

CHAIRMAN EWASUTYN: Any comments from Board Members as far as the preliminary resolution?

MR. GALLI: No additional.

MR. BROWNE: No.

MR. MENNERICH: No.

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Then I'll move for a motion to approve and accept the preliminary approval for the Secure Property Management three-lot subdivision that was presented by our

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Attorney, Mike Donnelly.

MR. PROFACI: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Joe Profaci. I have a second by John Ward. 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.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried. I thank everyone for attending the meeting tonight.

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

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: April 11, 2012

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

----- X
In the Matter of

FCB PROPERTIES, INC.
(2007-18)

Route 32 & Powelton Road
Section 80; Block 5; Lot 10
B Zone

----- X

AMENDED SITE PLAN
ARCHITECTURAL REVIEW BOARD

Date: March 15, 2012
Time: 7:47 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: DARREN DOCE &
VINCENT DOCE

----- X

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

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FCB PROPERTIES, INC.

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MR. BROWNE: Our next item of business is FCB Properties, Incorporated, project number 2007-18. This is an amended site plan and ARB being presented by Doce Associates, Darren Doce.

MR. DARREN DOCE: In February of last year we received final approval on a 10,000 square foot addition to the existing restaurant building that was Mom's located on Route 32 opposite the ramp onto I-84. At that time one of the conditions of approval was that we return to the Board for architectural review. We're here tonight to present our architecturals and request approval from the Architectural Review Board.

At the same time we're requesting a site plan amendment to the original site plan, a site plan approval for the amendment. We decreased the size. You can see the original building addition was approximately 10,000 square feet. We reduced the size, it's the dark shaded area, to 7,430 square feet. In addition to that, we placed a few parking spaces in front where the original proposed building was going to be located.

Other than that, the plans are

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basically the same as what was approved. The only change being the reduction in size of the building and placing some parking where the other approved building was located.

One thing I'd like to mention. Before Marshall Rosenblum, the Architect is going to go through the architectural plans, I'd mention one thing. Mr. Bonura has been in discussion with a bank which would require a drive-through, and that's if anything materializes with that. We understand we'd come back with another amendment. We would be reducing the building slightly, by 25 feet, to add a drive-through. Right now this is the plan we're looking at. This is the plan we'd like to request approval for. I just mentioned that because we were interested if the Board was so inclined to express any opinion on a drive-through, if there would be any objection to something like that. That's basically the plan.

I don't know if you want to ask questions about the site plan prior to seeing the architectural.

CHAIRMAN EWASUTYN: I'll hear any questions, or comments, or opinions as to a

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drive-through lane possibly in the future associated with the bank.

MR. GALLI: As long as the flow of traffic can follow coming in the way -- you would still have the one way there?

MR. DARREN DOCE: Here. Right. They'd probably come around this way.

MR. GALLI: The drive-through can go --

MR. DARREN DOCE: The drive-through would be -- well, roughly. We drop a section of the building and add a drive-through.

MR. BONURA: I just wanted to know if the Board will look upon it favorably, because if you didn't, I would just tell them, you know, we can't do it. I have no idea if it's going to go through, if they are even interested. Someone just came last week and said they might be interested in a bank and I said I'm going for final approval next week, and so I says I'll check with them and see if they do. They might not want it. They probably don't want it and I don't want to hold up the project again.

MR. GALLI: If you did put a bank in there, would that cut down the number of other

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businesses in there?

MR. DARREN DOCE: Yes. It has to cut down the size of the building, again because we have to take the area out of the parking lot and put the drive-through in, so we have to chop the building down.

MR. GALLI: You wouldn't have all the different businesses?

MR. BONURA: We would lose one. We would lose one; correct?

MR. DARREN DOCE: Yes. One.

MR. BONURA: Well, depending on the size of the bank. He said 2,500 square feet. Based on that, we would lose 1,000 square feet. We'd take 1,000 square feet off the building and make that the drive-through, which would be a 20 by 50. That's what we need. But that's -- who knows.

MR. BROWNE: It's not a case if we want it or don't want it, it's a case if you can make it work.

MR. BONURA: If I can make it work it's okay with you guys? That's all.

MR. BROWNE: It's your business, it's

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your property.

MR. BONURA: I just wanted to know if you were in favor of that.

MR. MENNERICH: I would say as long as the drive-through is on the end of the building. We don't want the drive-through in the front of the building.

MR. BONURA: No, no.

MR. HINES: I just want to jump in here. When you say you don't want it on the front, it is a corner lot. There may be a front yard setback. Obviously it's an existing site you have to work with.

MR. GALLI: It's got two front yards.

MR. BONURA: We have enough for the setback.

MR. DARREN DOCE: We meet the setback.

MR. BONURA: We meet the setback. What we're doing is cutting down the building and adding the drive-through.

MR. HINES: The design guidelines may say -- you have flexibility with that.

MR. BONURA: By cutting the building down and adding the roof of the drive-through,

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it's the same as the building just about.

MR. CANFIELD: One other point also. If it's three or more tenancies, it now becomes a mini-mall and then the zoning requirements somewhat change. I don't know, Darren, if you had looked at that. I don't know how many tenancies you're actually planning or if you actually know at this point. It's just a consideration. If it's over three, then that mini-mall requirement comes in, which is 2 acres, which you have, but then some of the other lot dimensions may or may not be a zoning issue. I don't know until we see exactly what it is you're going to end up doing.

MR. BONURA: Let's just go on this plan the way it is now and get this approved and then we'll worry about it later. If there is three tenants, maybe it will be one tenant. If we can get through this so we can go forward.

The light is going to be put in in April. All the permits are done, the deposits. Everything is all done. We're going through with that finally.

CHAIRMAN EWASUTYN: Ken Mennerich, additional comments?

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MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: As long as the traffic movements work, I have no problem with the drive-through.

MR. BONURA: This is exactly the way it was before.

MR. FOGARTY: I have no problem with this as long as it fits. What I do like about it is that the exit and entrance into this property is better than it was before by a long shot.

MR. BONURA: By nine years.

MR. FOGARTY: So right now I like what I see.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: Will it meet the amount of parking, just in case you have a restaurant and a bank?

MR. BONURA: Actually I think the requirements go down for a bank.

MR. WARD: That's what I meant.

MR. BONURA: It will be less. And also we're cutting down the size of the building, too.

MR. WARD: That brings it down.

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CHAIRMAN EWASUTYN: Darren, do you have anything to add to that?

MR. DARREN DOCE: I was just saying we're proposing it as retail. It does meet all the parking. If it was a bank, like Mr. Bonura said, it would need less parking.

CHAIRMAN EWASUTYN: Any comments from our consultants. Jerry Canfield?

MR. CANFIELD: I have nothing additional.

MR. HINES: I just have more suggestions. By reducing the size of the building and moving it back a little, it eliminated the need to replace the large diameter culvert that was previously proposed. That's a benefit to the site. I don't know if the easement was ever filed. The easement had to be revised and it doesn't need to happen any more. I don't know if you did that or not.

MR. DARREN DOCE: We did the easement based on the original approval that was revised. I'm not sure if an easement even exists.

MR. HINES: For the old pipe.

MR. DARREN DOCE: We were prepared to

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provide that revised easement.

MR. HINES: I don't know if you saw my comments, Darren. You're eliminating a couple catch basins.

MR. DARREN DOCE: Yeah, I saw it. That makes sense.

MR. HINES: There will be an existing pipe penetration. If you just move the manhole for the detention pond, there will be no need to repair the pipes and change the pipes at that location. It will probably save you some time and effort on the site there, too. We're suggesting that.

The existing catch basins are going to need to be field modified on that revised radius.

Just a comment that there's no additional impervious surfaces on the site, so the previous stormwater management plan is still valid for the site, and we're okay with that. That's all we have.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: On the site plan I just recommended that the handicap spaces be moved to

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those four new spaces in front of the building.
If it's going to be for the bank it's going to be
eliminated anyway. I don't think that's going to
make a difference.

Just a detailed signage chart is going
to be needed, both on the ARB drawings and the
site plan for the building department's review.
Just compare the amount of signage proposed and
allocated for each individual building sign.
Also include the individual pylon sign, and just
have a chart on each.

CHAIRMAN EWASUTYN: Marshall, do you
want to give a presentation on ARB?

MR. ROSENBLUM: Mr. Chairman, with your
permission (handing). What we have by
orientation is the old Perkins/Mom's structure on
the site which is becoming Little Sicily Italian
Restaurant. The facing on it is intended as the
synthetic stone which would have the build out to
the face rather than having a deep shadow line.
That mortar color would also be reflected in the
intent of the stucco color that would be used on
the tops and the sidewalls and ancillary areas.
The awnings are going to be decorative. It would

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be selected later. The roofing is intended as a slate blend, which is a blackish blue/gray, more of a standard -- nothing unusual. A traditional look. The facing, which is a little eyebrow over the shops which shade the signage, was intended as a bronze. In this case it's more of a weathered copper color -- I can pass that along if you'd like -- to give a more of a natural look rather than a paint look to blend in with the warmth of the stone color.

Once the signage is determined -- right now we have sign boards available but it's more of a continuous decorative strip rather than a true amount of signage. We don't know the number of tenants, we don't know the logos or the graphics that would be represented or just placed on the sidewalls of the building. So a fabric Sunbrella type awning that would let some of the light shine through. It will be primarily a green, red, natural restaurant type of color shading.

Do you have anything to add to that?

MR. BONURA: No.

MR. ROSENBLUM: Again, giving it a

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traditional look.

The roof height varies along the building, about 20 foot 6, 21 foot. Again, it changes as you go across. The tower is just under your limit to the base of the spire.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: Is that glass all up there, the tower?

MR. ROSENBLUM: It's glass on three sides. The backside is actually a mechanical access door right off the roof. We're required to have, by the current code, a minimum of one-quarter inch per foot slope on the new roof surfaces and on the existing roof surfaces to maintain the drainage, but we're able to get an access height over the existing structure and the back to maintain not only the intended glow, the LED type lighting that may be within the tower, but be able to maintain mechanical access below it.

MR. BROWNE: How many mechanicals will be in there?

MR. ROSENBLUM: Mechanicals, no. That

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would just be at the entrance area. The mechanicals themselves would be on the roof, much as they are right now. Rooftop units shielded from view by the roof going around on three sides.

This is the side of the shops. In other words, this is a restaurant in front, this portion is the side of the shops. Essentially if a bank goes this would become the side of the bank and this window would become the drive-through. This is the side of the restaurant and this area here represents the back where the -- the parking isn't there but this is the rear side. There should be no personnel traffic there.

This is the landscaping and patio area.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. ROSENBLUM: The actual height I had on the drawing. 35 feet to the base of the spire.

CHAIRMAN EWASUTYN: I think that's the maximum you can have.

Jerry, 35 feet would be the maximum?

MR. CANFIELD: Per zoning, yes.

MR. MENNERICH: I think the building

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looks nice. I guess the question that Jerry brought up, I count six possible businesses going in here, which certainly would make it --

MR. ROSENBLUM: I divided and showed the maximum that I could fit in there for review and discussion purposes as opposed to the minimum and then coming back later and saying we're going to have more shops. So I'd rather address that initially. Probably there's not going to be more than minimal. In this economy -- there was a discussion that perhaps smaller shops would be easier to deal with.

MR. MENNERICH: I can understand your viewpoint there, but I guess what I'm concerned about is how does it affect the site plan?

MR. ROSENBLUM: It doesn't.

MR. DONNELLY: It becomes a different use, and it may. We haven't reviewed it with that in mind.

MR. BROWNE: Review that on your end to see what the impacts are.

MR. BONURA: We don't know what the thing is.

CHAIRMAN EWASUTYN: I think the

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understanding that we're coming to this evening
is there's a potential of going in the direction
of having a bank. What we're very certain of in
today's day and age is there's a lot of
uncertainty as to how a project will be used. I
think that a good representation of that is a
good portion of our meetings are having
amendments to amendments to amendments of site
plans because everyone is optimistically moving
forward, hoping to find the magic, whether it be
the financing, the tenants and all the complete
elements that make up an approval. What we're
really saying to you is there may be a
possibility, if you find that many tenants to
satisfy the build out, you may have to come back
for an amended site plan to show that you're in
compliance with the zoning regulations. At this
point you're very common in what you're doing.

MR. BROWNE: On the drawings here, all
the white area, the white along the -- under
the --

MR. GALLI: You have above the doorway.

MR. ROSENBLUM: That would be the
cement, the efface stucco. That would be the

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color of the mortar. That's a stucco that wraps around.

MR. BROWNE: Where the signage is, you have the signage, those colors would be --

MR. ROSENBLUM: We don't know.

MR. BONURA: We have to come back for the signage because we don't know who's going in there or anything. This is just -- we're not asking for the approval of the signs.

MR. BROWNE: Where I'm going with that; as far as the color goes, would you be putting signs -- are you getting approval for colors to go there now with the signs on whatever you get or you're going to have to come back for the color, signage and the whole thing?

MR. DONNELLY: Usually what we want to see is that you have a cohesive sign plan, how the square footage will be divided up among the tenancies, what kind of signs, so that they have some degree of consistency in terms of style and color choice. If that's approved you're not required to come back for the individual signs, provided that they comply with the cohesive sign plan.

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MR. ROSENBLUM: Typically we would have information from a signage company of a signage system, whether it's individual letters or illuminated letters, that would work in the general areas. For a primary tenant sign, such as a State Farm or the restaurant, they may have individual graphics that are special to that business. Certainly we may need to come back for that. Or a logo. Starbuck's.

MR. DONNELLY: We can say for now there's no approval of the signs shown on the plans and you'll have to return is the other way to handle it.

MR. BONURA: We don't know who the tenants are going to be. We'll get one thing approved and Starbuck's comes in and they want their letters.

MR. FOGARTY: Right now you need a signage plan and a landscape plan. Those things are still outstanding.

MR. HINES: The landscape is done.

MR. DONNELLY: That was part of the original approval.

MR. FOGARTY: Has Karen commented on

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it?

MR. DONNELLY: Yes.

MR. HINES: This was previously approved. They're just reducing the size of the building.

MR. BONURA: We can come back for the sign when we know what's going on.

MR. BROWNE: I'm just trying to save a step in there.

CHAIRMAN EWASUTYN: Okay. We have approved site plans with the understanding that signage was not approved at the time of site plan approval.

MR. BONURA: That's okay.

CHAIRMAN EWASUTYN: And for the same reason that we're discussing, because there's again an uncertainty as far as who the tenants may be and how it will be laid out. These are very different times than the early 2000s when in those days you did have tenants. Money wasn't the issue, time was the issue. In today's world, money is the issue and time isn't the issue because, like yourself, this many years later you still have time because you don't have the people

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ready to move in. So it's a balance. It really is.

John Ward?

MR. WARD: I'm piggy backing what you said, John, in reference to amending the site plan.

CHAIRMAN EWASUTYN: All right.

MR. PROFACI: I have a question.

CHAIRMAN EWASUTYN: Sorry.

MR. PROFACI: The tower itself, is that to be used for any purpose other than decorative?

MR. ROSENBLUM: No. It's strictly decorative to give some mass to the building and a view.

MR. BONURA: I've tried to make it an attractive building since it is staring at you when you come off the exit. A lot of people come off there and that's the first thing they're going to see for Newburgh. This is a second plan. The first plan was a much simpler, much less expensive plan. We wanted it to be a showplace.

MR. PROFACI: You want to represent Sicily in a great light anyway.

MR. BONURA: Exactly. I'll just bore

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you for a second. I went in the restaurant business since 1971. I bought a piece of property across the river and the broker said what kind of restaurant are you opening and I said Italian. Why? Because I'm Italian. He said you want pancakes. Well, 42 years later I'm building my Italian restaurant.

CHAIRMAN EWASUTYN: You got up enough nerve at this point.

MR. BONURA: That's it. It's going there.

CHAIRMAN EWASUTYN: Any comments from anyone else at this point?

(No response.)

CHAIRMAN EWASUTYN: I think the first motion before us is to grant ARB approval. Okay. I'll move for that motion, to grant ARB approval for FCB Properties, Inc.

MR. FOGARTY: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by, was that Tom Fogarty?

MR. FOGARTY: Mm'hm'.

CHAIRMAN EWASUTYN: And is the second

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by Ken Mennerich?

MR. MENNERICH: Yes.

CHAIRMAN EWASUTYN: Seconded by Ken Mennerich. It was hard to hear. Any discussion of the motion?

MR. BROWNE: The signage is part of the site plan; correct?

CHAIRMAN EWASUTYN: Correct. I had a motion by Tom Fogarty, I had a second by Ken Mennerich. I had discussion by Cliff Browne. Any further discussion?

(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.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Darren, do you want to bring us through one more time on this site plan?

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Michael, this is an approval for an amended site plan?

MR. DONNELLY: It's an amended site plan. Basically I will carry forth all of the acceptance -- before we can change it, carry forth all of the conditions of the original site plan approval. Some of those conditions are no longer required. The drainage easement isn't required and the offer of dedication, since it's already been accomplished as I understand it, will not be required. We will include language that says that the site is not approved for a mini-mall number of tenancies. That would require you to return for amended approval. And the language of the standard ARB condition would be included. We will include a condition that says that this approval does not constitute an approval of the signs shown on the plan and you'll need to return for sign approval.

CHAIRMAN EWASUTYN: Any comments or questions from Jerry Canfield, Code Compliance?

MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

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MR. HINES: No.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: No.

MR. DONNELLY: I'm sorry. We do need two sign-off letters from Bryant and Pat on their memos from March 9th.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: No.

MR. MENNERICH: No.

MR. PROFACI: No.

MR. FOGARTY: No additional.

MR. WARD: I like your design.

MR. ROSENBLUM: Thank you.

MR. WARD: Thank you.

CHAIRMAN EWASUTYN: Having heard the conditions of approval for the amended site plan for FCB Properties presented by the Planning Board Attorney, Mike Donnelly, I'll move for that motion.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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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.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Congratulations.

MR. BONURA: Can I ask a question? What do we need for a mini-mall? What changes?

MR. CANFIELD: Some of the zoning requirements, Joe.

MR. BONURA: Like what?

MR. CANFIELD: The lot width, the lot depth. It's 2 acres minimum on lot area.

MR. BONURA: We have that.

MR. CANFIELD: One thing I looked at, I

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think the lot width is 198 plus or minus, and the setbacks on the front and rear yard, you may want to take a look at that.

MR. BONURA: That's it?

MR. CANFIELD: The bulk use requirements. That's correct. Just comply with that.

MR. HINES: Would that be a requirement to come back or if he complies it's okay?

MR. DONNELLY: Only if it --

MR. CANFIELD: Doesn't.

MR. HINES: I don't know that you need to come back unless --

MR. DONNELLY: I'll change the language to say that.

MR. HINES: I'm just suggesting it. If it complies with those bulk requirements by default --

MR. VINCENT DOCE: That's what I was going to ask you.

MR. BONURA: If it complies, then we don't have to come back?

MR. CANFIELD: That's correct. The only reason why we say that is that originally

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this was not viewed as a mini-mall.

MR. BONURA: Okay. Thank you.

MR. VINCENT DOCE: If I could just say one thing very sincerely. I've watched this project for a lot of years, and I have to say that I think the developer should be commended for the perseverance he had. He had an easy way out a number of times to take approval from various agencies and he always opted for what he thought was safest, best and sometimes just dogging this kept him going on. It was a tremendous expense, a tremendous amount of red tape, and he always opted -- the applicant always opted for what he thought was best for not only himself but for the property and for that section of the Town at least. And he could have skated it several times with easier approvals and with clients that he had in hand, and he just refused to knuckle under. I think that the project should be commended for that. He really, really stuck to it. He had an easy way out a number of times and he didn't take it. He battled through red tape with the State that was incredible and he's come up with a much safer, much attractive

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site. I don't think that the revenue to him is going to be any more than if he just took what he could have taken four or five years ago. I'd just like to point that out.

CHAIRMAN EWASUTYN: Good luck to you, Mr. Bonura.

MR. BONURA: We'll be there soon.

(Time noted: 8:15 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: April 11, 2012

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

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In the Matter of

PROPOSED LOCAL LAW #1 OF 2012
SIX-MONTH MORATORIUM ON PERMITS AND APPROVALS FOR
ADULT-ORIENTED BUSINESSES

Discussion by Michael Donnelly, Esq.

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BOARD BUSINESS

Date: March 15, 2012
Time: 8:15 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

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

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2 MR. BROWNE: That concludes the
3 agenda items. The first item of Board Business
4 is Mike Donnelly will discuss the proposed
5 Local Law #1 of 2012 imposing a six-month
6 moratorium on permits and approvals for adult-
7 oriented businesses.

8 MR. DONNELLY: As you know, you've been
9 sent a copy of a proposed local law that places a
10 moratorium on adult-oriented businesses within
11 the Town. What the law, in essence, says is first
12 that there is a moratorium on all adult-oriented
13 businesses everywhere in the Town, and of course
14 adult-oriented businesses is a defined term
15 within the law.

16 The law, however, goes on to say that
17 notwithstanding the blanket moratorium, in
18 certain zones under certain circumstances, adult
19 uses are permitted to move forward with the
20 approval process. That would be an adult-oriented
21 business situated in the B, the IB or the I
22 district as shown in the 1974 zoning map, last
23 amended in 2009, and which are not located within
24 1,000 feet of any boundaries of the RR, AR, R-1,
25 R-2 or R-3 residential zoning districts, and

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provided that such uses are permitted in the area proposed. So the law starts as a blanket but then allows an exception.

The rationale for the law is a series of studies that the Town Board has before them that suggest that the location of adult-oriented businesses, particularly in areas that are near to residential areas, has certain adverse indirect impacts on the quality of life and the stability of those neighborhoods.

Whenever the Town Board proposes a change to any provision of the Zoning Code, Section 185-60 of the Code requires that before the Town Board acts they send the matter to the Planning Board for a report. Arguably this doesn't fall within that because there's no change proposed at this time to the Zoning Code, rather there's a suspension, or a moratorium, declared on certain provisions. I suppose in the abundance of caution we should consider that temporary suspension to be the equivalent of a change. The Town Board has asked for the report and we should give it to them.

As I pointed out in my earlier e-mail

1 to you, the Code requires that your report
2 address four specific criteria. The first of
3 those is whether the change in the ordinance
4 here, the moratorium, is consistent with the aims
5 and principles embodied in the zoning chapter as
6 to the particular districts concerned. Now, since
7 this language is normally intended to talk about
8 a change in the code, and this being a
9 suspension, it's a little hard to get the round
10 block to fit in that square hole. It seems to me
11 that obviously -- well first, it will affect
12 different zoning districts in different fashions,
13 so it's hard to have a one size fits all answer.
14 Obviously it will prohibit certain uses that are
15 arguably now permitted, therefore it is not
16 consistent with the way in which all of those
17 zoning districts have been read. That is the
18 intent of the law, to suspend, for at least the
19 time being, those requirements.

21 So if that makes sense to you, my
22 suggested language on that criteria is something
23 like the moratorium will affect different zones
24 differently and in some districts will prohibit
25 uses that are arguably now permitted. However,

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2 given the purpose of the moratorium law, the
3 placing of a limit on development while the
4 secondary effects of adult businesses in areas
5 adjoining residential districts is studied, such
6 impacts are unavoidable.

7 I think that answers that criteria. If
8 there's anything else you would like to add to
9 that one, I can put it in my notes.

10 The second required criteria you
11 address is which areas and establishments in the
12 Town will be directly affected by such change and
13 in what way they'll be affected. Here I think you
14 can just go back to the law that says those areas
15 that are located within 1,000 feet of the listed
16 residential zones will arguably have the uses
17 that are permitted under the code suspended for
18 the period of time in which the moratorium
19 remains effective. In other words, the answer is
20 what the moratorium says, that certain uses will
21 be directly -- certain establishments or areas of
22 the Town will be directly affected.

23 The third criteria is the indirect
24 implications of the proposed changes of the
25 moratorium and its affect on other regulations. I

1 think what they're getting at, or at least what I
2 think an intelligent answer might be, is the law
3 intends to protect against the indirect effects
4 of adult uses, therefore the law suspends those
5 preventing adverse impacts during the duration of
6 the moratorium, and it does so intentionally. In
7 other words, when you're reporting on a zone
8 change, the Town Board wants to know what
9 indirect impacts might the zone change have.
10 Here this law is intending to suspend what the
11 Town Board has already determined on a
12 preliminary basis to be adverse and indirect
13 impact on the area in question.

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15 The last criteria is whether the
16 amendment is consistent with the aims of the
17 master plan. As I understand it, the master plan
18 has always been silent on whether or not adult
19 uses should be allowed in any particular areas of
20 the Town. I don't know that that's necessarily
21 that this is inconsistent with it, it's just that
22 would be the observation, that the Town master
23 plan is silent on the issue.

24 CHAIRMAN EWASUTYN: Comments from John
25 Ward?

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MR. WARD: No comments.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: Does there have to be a lengthier study? In other words, when they talk about what are the secondary effects of adult-oriented business, are they looking for a study on this?

MR. DONNELLY: The Town Board has, and I don't know if you've seen the documents they have, they have been provided by the town attorney with a number of nationally recognized studies of the secondary impacts of adult uses. They will have to take stock of those coming out of the moratorium in terms of rewriting code and deciding where adult uses should be permitted. So they have a lot already. Whether they feel they will need more, they will obviously have to hold a public hearing and hear from the public itself. They have a fair amount now. They may indeed collect more. Before they will decide where adult uses should be allowed, I think they need to take stock of that data and be satisfied that it's adequate.

MR. FOGARTY: Will they be able to use

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this information as a reason to put a stop to the project out on 9W?

MR. DONNELLY: I can't tell you where they are going to ultimately decide adult uses are permitted. I couldn't begin to tell you.

MR. FOGARTY: They could just designate one area?

MR. DONNELLY: The law requires -- the First Amendment case law says a town may not prohibit adult uses in all areas within its geography. The flip side of that is it may allow it in an area or areas that will adequately protect the First Amendment rights of those that wish to express themselves in that fashion. Where that will end up, I couldn't begin to tell you. Some part of the formula that the Town Board will look at is where would most -- where would it least likely create secondary effects.

MR. FOGARTY: Thank you.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Mike, did I understand you correctly or did I misunderstand that the moratorium would not allow current adult businesses to continue operating?

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MR. DONNELLY: It has no affect on ones that exist. It would prohibit the creation of new ones or the expansion of any that currently operate.

MR. PROFACI: That's what I thought.

MR. DONNELLY: And it would allow both new and expansions in those listed districts, the business and industrial districts, provided that they're not within 1,000 feet of certain residential zones and provided that the use under entertainment use is permitted. It wouldn't have any impact on those that currently operate.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The existing ones are being grandfathered in anything they come up with?

MR. DONNELLY: I don't know what the ultimate determination would be. The Town Board does not have to do that. The law says that certain uses, if determined to be noxious, can be amortized out. In other words, say you had a junk yard in the middle of an area where the Town felt that was inappropriate, it can't overnight tell the junk yard it has to close but it can say that

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that junk yard can operate for another ten years, fifteen years, twenty years, whatever it is, after which time it must cease. The amortization period must reflect a reasonable return to the property owner, such that the immediate shutting down wouldn't constitute a taking. Whether the Town Board has any inkling of going in that direction, I have no idea. That's their call completely. What they will have to do is make sure they allow it to stay in certain areas. Traditionally most municipalities most times grandfather existing uses. The amortization route is never black and white, it's always susceptible to a challenge. If the challenge is upheld on a taking ground, than the Town has to pay the developer for the loss. It's not a route that most legislative bodies at the town level choose to do.

CHAIRMAN EWASUTYN: Cliff?

MR. BROWNE: Nothing.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: I'm good.

CHAIRMAN EWASUTYN: Any comments from our representatives. Jerry Canfield?

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MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: I have nothing.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: No.

CHAIRMAN EWASUTYN: So the motion before us this evening is to have Mike Donnelly prepare a letter for the Planning Board and send to the Town Board for the proposed Local Law #1 of 2012 imposing a six-month moratorium on permits and approvals for adult-oriented businesses. I'll move for that motion.

MR. PROFACI: So moved.

MR. FOGARTY: Second.

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

MR. BROWNE: Just to mention that I think Mike, what he drafted I think is very appropriate.

CHAIRMAN EWASUTYN: Okay. I have a motion by Joe Profaci. I have a second by Tom Fogarty. We had discussion by Cliff Browne. Any further discussion?

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(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So
carried.

(Time noted: 8:25 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: April 11, 2012

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

----- X
In the Matter of

SITE PLAN PROCEDURE

Discussion by Michael Donnelly, Esq.

----- X

BOARD BUSINESS

Date: March 15, 2012
Time: 8:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
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CHAIRMAN EWASUTYN: The second item we discussed this evening during the work session. At this point we understand that we sent a letter to the Town Board -- Mike Donnelly prepared a letter for the Town Board outlining an example of how the procedure for simplifying the site plan review process could be considered.

Okay. As a matter of record, very late this evening, it was too late to act on it, we received a letter from Ross Winglovitz. He is asking for an extension of the Driscoll and Polo Club. We'll make that Board Business at the meeting in April. That current extension lasted to March 29th. I put in a call to Ross to let him know that we can't be receiving extensions the night of the meeting because we do set our Board Business, and also now that we have the Freedom of Information Law we would like to post that on our website as a matter of policy.

All right. I thank you all. I'll move for a motion to close the Planning Board meeting of March 15th.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

(Time noted: 8:30 p.m.)

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

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

DATED: April 11, 2012