

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

VERIZON WIRELESS - MID-VALLEY MALL 2
(2011-05)

Mid-Valley Mall Water Tank
Section 75; Block 1; Lot 11
AR Zone

----- X

PUBLIC HEARING
SITE PLAN & SPECIAL USE PERMIT

Date: May 5, 2011
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: SCOTT OLSON

----- X

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

1
2 MR. GALLI: Welcome to the Town of
3 Newburgh Planning Board meeting of May 5, 2011.
4 At this time I would like to call the meeting to
5 order starting with a roll call vote.

6 Myself, Frank Galli, present.

7 MR. MENNERICH: Present.

8 CHAIRMAN EWASUTYN: Present.

9 MR. FOGARTY: Here.

10 MR. WARD: Present.

11 MR. GALLI: We also have in attendance
12 tonight our professional consultants that advise
13 the Board. They can introduce themselves, who
14 they are and what they do.

15 MR. DONNELLY: Michael Donnelly,
16 Planning Board Attorney.

17 MS. CONERO: Michelle Conero,
18 Stenographer.

19 MR. CANFIELD: Jerry Canfield, Code
20 Compliance Supervisor.

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

23 MR. COCKS: Bryant Cocks, Planning
24 Consultant.

25 MS. ARENT: Karen Arent, Landscape

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Architectural Consultant.

MR. MUSSO: Mike Musso, HDR Wireless
Communications.

MR. GALLI: At this time, if you would
stand.

(Pledge of Allegiance.)

MR. GALLI: If you would turn off all
cell phones, please.

The first item of business tonight is a
public hearing for a site plan and a special use
permit for Verizon Wireless, Mid-Valley Mall,
project 2011-05. It's located at the Mid-Valley
Mall Water Tank, Section 75; Block 1; Lot 11,
being represented by Clifford Rohde of Cooper,
Erving & Savage, L.L.P.

MR. OLSON: Good evening. My name is
Scott Olson. Cliff is no longer with our firm
anymore, so I'll be representing Verizon
Wireless.

MR. GALLI: Do you have the mailings?
They're a week late.

MR. OLSON: I have them right here.

MR. MENNERICH: "Notice of hearing,
Town of Newburgh Planning Board. Please take

1 notice that the Planning Board of the Town of
2 Newburgh, Orange County, New York will hold a
3 public hearing pursuant to the Municipal Code of
4 the Town of Newburgh, Chapter 185-57, Section K,
5 and Chapter 168-16, Section A, on the application
6 of Verizon Wireless, Mid-Valley Mall 2, for a
7 site plan and special use permit for the
8 installation of the cellular phone antennas on
9 the side of the water tower on the Mid-Valley
10 Mall site on premises 39 North Plank Road, North
11 Plank water tank, in the Town of Newburgh,
12 designated on Town tax map as Section 75; Block
13 1; Lot 11, B Zone. Said hearing will be held on
14 the 5th day of May 2011 at the Town Hall Meeting
15 Room, 1496 Route 300, Newburgh, New York at 7
16 p.m. at which time all interested persons will be
17 given an opportunity to be heard. By order of
18 the Town of Newburgh Planning Board. John P.
19 Ewasutyn, Chairman, Planning Board Town of
20 Newburgh. Dated April 11, 2011."

22 MR. GALLI: One second, John, and I'll
23 have the information for the mailing.

24 CHAIRMAN EWASUTYN: Okay. At the close
25 of the presentation, or sometime this evening,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

we'll have a tally on the registered mailing.

You can make your presentation, please.

MR. OLSON: Yes, Mr. Chairman. My name is Scott Olson, I'm with Cooper, Erving & Savage. We have Michael Orcher from Tectonic Engineering in the front row and Jonathan Edwards with Verizon Wireless, he's the RF engineer.

It's a pretty straightforward and simple application. We're looking to co-locate on an existing 140 foot water tower/water tank at the Mid-Valley Mall. We're looking to put twelve antennas on the tank itself at about the 112 foot level which is along the catwalk. Obviously the antennas and equipment will not extend the tower any higher.

The antennas and cables will be painted to match the exterior of the tank as it exists today.

Also, part of the proposal is a 12 by 30 foot equipment shelter, which is back towards the back of the parking lot, which would be used to house our equipment and basically the guts of the facility. We provided you, in our application, a copy of Jonathan's radiofrequency

1 analysis, and that demonstrates why we need this
2 site. Essentially we will be adding or providing
3 coverage for two frequencies and services that we
4 do not currently cover in this area. That's the
5 RLTE, which is a high speed service, and our PCS.
6 We'll also be increasing the capacity of our 850
7 megahertz spectrum.
8

9 I believe Mr. Musso, your consultant,
10 has reviewed our information, and I think he's
11 concurred that we've demonstrated that we need
12 this facility, but I don't mean to put words in
13 his mouth.

14 We have also some other information.
15 We've got a licensed engineer who provided a
16 interference study that demonstrates that these
17 antennas that we're proposing will not interfere
18 with any of the existing antennas, nor will it
19 interfere with any other electrical devices in
20 the vicinity.

21 We've also provided the structural
22 analysis that demonstrates that the structure as
23 it exists today can accommodate our proposed
24 equipment and antennas without any need for any
25 further modification. I think critical to the

1 application, we have an engineer's report that
2 demonstrates that the antennas that we are
3 proposing today, combined with the antennas that
4 are up there now, will emit signals and strengths
5 far below that which is allowed under the FCC
6 regulations. That's certified in the record by
7 our engineer. I believe that Mr. Musso provided
8 a written -- in March I believe, a written
9 comment on our application. We reviewed that.
10 He's provided certain recommendations about the
11 conditions. We have no problem with any of the
12 conditions except for possibly one which maybe we
13 should talk about once he's provided an
14 opportunity to present to the Board. That
15 condition involves creating a background
16 emissions level after our antennas are installed,
17 should this Board approve the application. We're
18 not trying to hide anything but the reason we
19 don't think it's appropriate or necessary is the
20 fact that emissions are the exclusive
21 jurisdiction of the FCC. They control everything
22 to do with emissions in terms of wireless
23 communication facilities. They've got a
24 regulation on the books now that says that our
25

1 antennas, because they're at 112 feet, they're
2 categorically exempt from any regulation or --
3 not regulation but monitoring. So the FCC
4 doesn't require us to even monitor that because
5 they're just so high up above ground. We don't
6 believe that this Board should then impose that
7 type of condition on our application. We've
8 provided you with an engineer's report that
9 demonstrates that we're not going to be anywhere
10 near the permitted FCC emission requirements.
11

12 If there's anybody from the public
13 here, I would be happy to entertain any
14 questions, or any questions the Board Members or
15 consultants may have.

16 Absent any real issues, we would
17 request the Board to issue a SEQRA negative
18 declaration and grant the special use permit and
19 site plan approval. Thank you.

20 CHAIRMAN EWASUTYN: At this point, if
21 there's anyone in the audience that has any
22 questions or comments, will you please raise your
23 hand and give your name and your address.

24 (No response.)

25 CHAIRMAN EWASUTYN: Okay. At this point

1
2 there's no one in the audience who has any
3 questions or comments.

4 The Board will refer to Mike Musso from
5 HDR LMS who is our telecommunication advisor.
6 Mr. Musso.

7 MR. MUSSO: Mr. Chairman, Members of
8 the Board, thanks for having me here tonight.
9 Mike Musso of HDR Engineering working on behalf
10 of the Town of Newburgh.

11 What I'd like to do tonight is briefly
12 go over the methods and findings of our March
13 30th letter report which you're in receipt of.

14 Looking at the Verizon application,
15 what Mr. Olson just went through, I just wanted
16 to reiterate this is an existing structure.
17 That's certainly the type of application that the
18 Town of Newburgh Wireless Code would prefer as
19 opposed to a new tower or new monopole in other
20 locations.

21 Currently there's a 132 foot pole --
22 water tank. Six Nextel antennas are on top.
23 Almost in the center of the tank are a
24 combination of twelve AT&T and twelve T-Mobile
25 antennas. A total of twelve antennas are

1
2 proposed by Verizon to cover 360 degrees around
3 that area along the catwalk of the tank. It's a
4 little bit different than what's been approved
5 and reviewed by this Board in the past in that
6 the catwalk is set out somewhat from the water
7 tank.

8 One of the few things that we
9 requested, for clarification, in additional
10 information was photo simulations of what the
11 tank would look like, what it looks like now with
12 the approved antennas on and what the Verizon
13 antennas would add to that visual. We feel that
14 there's not a significant impact.

15 One of the related things that we asked
16 for was a commitment to color matching the panel
17 antennas but also the cable runs. There is
18 cabling that has to attach the antennas on the
19 tank to the ground-based equipment at the base.
20 We feel that the carriers that have been approved
21 and built out so far as this location have done a
22 pretty decent job in color matching and we want
23 to make sure that Verizon, if approved, would be
24 consistent.

25 The other question that we had was a

1 clarification on the health and safety signage
2 and the conformity with the fenced-in area that's
3 being proposed with the ground-based equipment
4 and that of other carriers. Our report
5 summarizes some of the things we've asked for,
6 what we've received. We've received everything
7 to our satisfaction. We feel that the
8 application is certainly comprehensive, and
9 therefore we issued our report on March 30th.

11 One of the key things that we do always
12 look at is health and safety with radiofrequency
13 emissions. We did confirm that Verizon's
14 consultant not only assumed the twelve antennas
15 proposed for Verizon but also did a thorough
16 inventory of the existing antennas at the site.
17 As noted by the applicant rep tonight, all
18 ground-based areas where the general public,
19 adults and children, might reside, or shop, or
20 recreate, all ground-based readings would be well
21 below what's known as the maximum permissible
22 exposure limit, the MPE limit.

23 Something that we've done in the Town
24 of Newburgh consistently, and which we've also
25 done in about twenty other New York

1 municipalities that we work for, on co-location
2 sites such as this we do always request a
3 one-time background baseline field reading just
4 to confirm that the calculations are accurate. I
5 don't expect them to be different than what's
6 provided in the application materials. That is a
7 convention I know we've worked with here at this
8 Board and other municipalities. In fact, here in
9 the Town of Newburgh I've gone out on occasion,
10 after sites have been constructed, with applicant
11 representatives to actually take those field
12 readings. So we don't feel they're overly
13 onerous but we feel it's a good idea for the
14 building department to have those on file should
15 anyone actually ask, not just the calculations
16 that are on paper but what the field readings
17 actually were as well.

18
19 The other points to bring --

20 CHAIRMAN EWASUTYN: Let's stop at that
21 point for now and see if we're in agreement with
22 that. Are we in agreement?

23 MR. OLSON: As the lawyer I just -- I
24 make the argument it's not necessary, however,
25 having said that, we are confident that the

1 readings would be consistent with the
2 calculations, plus or minus, and that it would be
3 nowhere near the maximum permitted emissions. I
4 mean it's probably not a difficult thing to do if
5 that's something the Board is absolutely going to
6 insist upon.

8 CHAIRMAN EWASUTYN: I'll poll the Board
9 Members. Frank?

10 MR. GALLI: We did it for the
11 applicant.

12 MR. MENNERICH: I would think the
13 building department would like to have that
14 information in case somebody does come in and
15 ask.

16 MR. CANFIELD: I believe, yes, it would
17 be valuable to have on hand.

18 MR. FOGARTY: We should be consistent.

19 MR. WARD: Yes.

20 MR. OLSON: Okay. I made my argument.
21 I know where you're coming from.

22 CHAIRMAN EWASUTYN: You listen well.
23 Thank you.

24 MR. MUSSO: It is appreciated, I think
25 on all ends.

1
2 The scope of work. What we've done in
3 the past was literally meet somebody in the field
4 with the instrument, the shaped probe, picking
5 some locations around the property, around the
6 neighborhood in this case. One that we did for
7 T-Mobile, I think we were in the field all of
8 about two hours and then the data was reduced in
9 a very succinct, and a one-and-a-half page letter
10 was submitted. I thought that was great when
11 they did it.

12 Switching to another point in the
13 application. So we've covered a little bit on
14 the aesthetics, the type of site. It's not a new
15 structure, not a new tower. The height is not
16 being increased with this proposal. We talked
17 about the health and safety a little bit. We
18 also reviewed the structural analysis.

19 As you know, this water tank, its
20 supports are actually designed to handle
21 significantly more dead load with water, 300 plus
22 thousand gallons of water. The applicant did a
23 complete job in accounting for the antenna
24 positions, not only again the twelve proposed
25 Verizon but the existing. They also used a

1 conservative standard from the American
2 Waterworks Association that actually looks at
3 actually a higher wind load than what the Tower
4 Industry Associates standard looks at. There is,
5 as expected, adequate capacity.

6
7 There were some minor recommendations
8 for some anchor bolt reinforcing, which, if
9 approved, that should be carried out by the
10 applicant. I'm sure they wouldn't have a problem
11 with that. So the structural and foundation is
12 adequate to accommodate this proposal.

13 Importantly, looking at the coverage,
14 as always the applicants are asked to provide
15 coverage maps where their existing, in this case
16 Verizon, sites in the area are, where there are
17 holes in its coverage or in its operations and
18 what this site would achieve. Indeed, looking at
19 the three existing Verizon sites in Town, at
20 Stewart Airport, at the Newburgh Mall monopole
21 and the Valley View tower, there is a gap in
22 coverage on the eastern part of the Town. Parts
23 of Route 84 and 9W are unserved by two other
24 frequencies, the PCS range and the long-term
25 evolution range which is getting them into 4G or

1
2 fourth generation. This site would also be
3 important, due to its high traffic, in filling in
4 gaps for its cellular range.

5 Overall, based on coverage and
6 operations, this site would be justified.

7 There were a couple alternates that
8 were looked at much further south. The same
9 rationale going to some existing structures.
10 Those two alternatives, Luke's Hospital in
11 Cornwall and Newburgh Free Academy, just don't
12 provide the coverage as far north as this site
13 would.

14 In summation, I think that the
15 application materials were indeed comprehensive.
16 Our questions, which were few, were answered for
17 this site, and the site seems justified. It
18 seems that it would operate reasonably and safely
19 as proposed.

20 CHAIRMAN EWASUTYN: Thank you. Comments
21 from Board Members. Frank Galli?

22 MR. GALLI: No additional.

23 CHAIRMAN EWASUTYN: Ken Mennerich?

24 MR. MENNERICH: A question I was
25 wondering. On adding the anchor bolts, what is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the process? They're going to use some sort of drill and insert in the foundation --

MR. MUSSO: I'm not speaking as a structural engineer here, but yeah, I believe it's -- it's just adding some cross bracing on some of the legs.

MR. MENNERICH: It's not an anchor bolt?

MR. DONNELLY: It's not a ground bolt.

MR. MUSSO: Let me see if I can get you something more specific on that.

MR. MENNERICH: I was looking at the --

MR. MUSSO: Two anchor bolts per leg should be added to improve the resistance to overturning.

MR. MENNERICH: I thought it was in with some of the drawings they showed where they would be put. They looked like they were anchor bolts but --

MR. MUSSO: Certainly it's in the structural analysis appendix. Let's see.

MR. MENNERICH: It says connection to the water tank.

MR. MUSSO: Right. Yeah, I would think

1 that what's shown in red here are the additions,
2 looking at the asymmetry of this. I don't want
3 to speak for our structural engineer who signed
4 our report, but what was being proposed in the
5 structural analysis, he was indeed satisfied with
6 the assumptions. I don't think, if part of the
7 question is it's going to present itself as a new
8 visual impact, it won't. It's something that
9 won't be -- really wouldn't be noticeable.
10

11 CHAIRMAN EWASUTYN: Tom Fogarty?

12 MR. FOGARTY: Well again, I asked this
13 question during the work session. You have one
14 organization saying we should use the bolts and
15 then you have another one -- maybe the
16 specifications are not as stringent -- saying no.
17 Looking at it from my perspective, we're going to
18 have 42 panels on this tower. We're going to go
19 from 30 to 42. Maybe we are reaching a point
20 where we have to take a look at doing something
21 to make sure that we strengthen the tower to make
22 sure that it doesn't overturn. I feel a little
23 uneasy not having that -- as long as it's being
24 recommended by one organization, not having that
25 as part of our, you know, list of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

recommendations. So I would be in favor of --

MR. MUSSO: Following the more stringent code for that?

MR. FOGARTY: Yes, I would.

MR. MUSSO: WWA.

MR. FOGARTY: It's number 5 on the recommendations from Patrick Lawler.

MR. MUSSO: Right.

MR. FOGARTY: The other thing, under the conditions for approval it says a security fence around the ground-based equipment and FCC warning signs should be routinely inspected and maintained at the site. Is that done by you people?

MR. OLSON: Yes, it is. We have operations people that come out there, usually once a month, once every two months, and that's part of the general inspection they perform.

MR. FOGARTY: Shouldn't that be "will be" routinely inspected and maintained?

MR. OLSON: That's fine.

CHAIRMAN EWASUTYN: Thank you.

MR. FOGARTY: Thank you.

CHAIRMAN EWASUTYN: John Ward?

1
2 MR. WARD: Just to clarify for the
3 record what the anchor bolts are for, you brought
4 it up, for wind resistance. If you could
5 clarify.

6 MR. MUSSO: I will try to, Mr. Ward.
7 Not as a structural engineer. Analysis of the
8 resistance to overturning. What that's looking
9 at are the surface area of the tank itself, the
10 panel antennas. It also seems, by the way, that
11 in any face you get up to eight antennas, that
12 would have full impact of wind, present
13 themselves to wind, but for a gust coming up, you
14 look at these new areas and the areas of the
15 tank. I'm also assuming the tank is empty of
16 water because the tank is not in use right now.
17 That would further reinforce the 100 mile-an-hour
18 wind with the tendency of the tank to overturn.

19 This is something Tom brought up
20 previously. If you do not use the AWWA standard,
21 the American Waterworks standard, there would be
22 no recommendation to reinforce. It's a
23 conservative measure in our opinion. When these
24 foundations are designed, they're designed for
25 that huge weight of water that's in there right

1 now. So it is recognizing a change in the tank
2 without having water in it, and it's recognizing
3 a conservative wind standard that's out there.
4 In a way it's almost not congruent because AWWA
5 is really for active water facilities and water
6 structures. This is not an active facility, it's
7 actually empty right now. So the applicant kind
8 of picked and chose. Our structural engineer was
9 very in favor of that. The point of it is a wind
10 gust up to 100 miles-an-hour, anchor bolts on the
11 legs would prevent any tendency towards the tank
12 tipping itself. Again, it's a conservative
13 measure. We feel that there's plenty of
14 structural capacity on the tank.

15
16 MR. WARD: Thank you, Mike.

17 CHAIRMAN EWASUTYN: Any comments from
18 the public at this point?

19 (No response.)

20 CHAIRMAN EWASUTYN: Okay. I'll refer
21 to our Planning Consultant, Bryant Cocks.
22 Bryant?

23 MR. COCKS: Yes. I only had two
24 comments. The first was that the project was
25 referred to the Orange County Planning Department

1
2 and received a response April 13, 2011 with a
3 local determination and no additional comments.

4 My second comment is that the bonding
5 is in place for the water tower with the previous
6 co-locations, so no security would be required
7 for the approval of this project.

8 CHAIRMAN EWASUTYN: Frank Galli?

9 MR. GALLI: The affidavit of
10 publication was published in The Mid-Hudson Times
11 and The Sentinel for the local newspapers.
12 That's in order. Sixty-two were mailed out,
13 fifty were signed and returned, one was refused.
14 The notice of the hearing and the mailings are
15 all in order.

16 CHAIRMAN EWASUTYN: Thank you.

17 At this point, if there's no comment
18 from the public, I'll move for a motion to close
19 the public hearing.

20 MR. MENNERICH: So moved.

21 MR. FOGARTY: Second.

22 CHAIRMAN EWASUTYN: I have a motion by
23 Ken Mennerich. I have a second by Tom Fogarty.
24 Any discussion of the motion?

25 (No response.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

At this point I'll move for a motion to declare a negative declaration for the site plan and special use permit for Verizon Wireless at the Mid-Valley Mall.

MR. GALLI: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Frank Galli. I have a second -- was that John Ward?

MR. FOGARTY: Yes.

CHAIRMAN EWASUTYN: 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself aye. So
carried.

At this point I'll turn to the Planning
Board Attorney, Mike Donnelly, to give us
conditions of approval for the site plan and
special use permit.

MR. DONNELLY: Some of these conditions
are standard ones, others came from Mike's
recommendations.

Firstly, any planned water tower
maintenance or inspection should be coordinated
with all the carriers on site. We will require
that nothing be built other than as shown on the
plans. Three, the applicant shall maintain this
operation in accordance with the Town's Wireless
Ordinance and all other provisions of the code.
We'll incorporate the condition that requires
that the antenna mounting structures and cables
be color matched to the existing water tower.
The fifth condition is the requirement that if
the water tank is ever put back in service, a

1
2 condition survey of the tower and its supports
3 will be required.

4 CHAIRMAN EWASUTYN: Thank you.

5 MR. DONNELLY: We have a couple more.
6 Any proposed increase in the antenna size or the
7 size of the ground-based equipment will be
8 approved by the Town prior to implementation.
9 Inspection of the security fencing equipment and
10 signs should be routinely carried out by the
11 applicant. And lastly what Mike spoke of
12 earlier, and that is the test after the tower is
13 operational in conjunction with Mike Musso with a
14 shaped probe in the field with the results to be
15 reported to the building department.

16 CHAIRMAN EWASUTYN: Thank you. Any
17 questions from the Board Members?

18 MR. GALLI: No additional.

19 MR. MENNERICH: No.

20 MR. FOGARTY: No.

21 MR. WARD: No.

22 CHAIRMAN EWASUTYN: Having heard the
23 conditions for final approval presented by
24 Attorney Mike Donnelly, I'll move for a motion to
25 grant site plan and special use permit for the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Verizon Mid-Valley Mall water tank.

MR. WARD: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by John Ward. 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. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Thank you.

MR. OLSON: Thank you very much.

CHAIRMAN EWASUTYN: Mike, thanks for your time.

MR. MUSSO: Thank you.

(Time noted: 7:25 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: June 4, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

QUICK CHEK
(2010-04)

Route 9W
Section 25; Block 5; Lots 1 & 8
B Zone

----- X

SITE PLAN

Date: May 5, 2011
Time: 7:25 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JEFFREY MARTEL

----- X

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

29

MR. GALLI: The next applicant is Quick Chek, 2010-04, Route 9W across from Leslie Road, Section 25; Block 5; Lots 1 and 8, Zone B for a site plan represented by Jeff Martel of Bohler Engineering.

MR. MARTEL: Good evening. Jeffrey Martel from Bohler Engineering. Jeff Albanese from Quick Chek is here as well. Good evening. It's good to see everybody again.

We're here for final site plan approval. Last time we were before the Board you granted us preliminary. Actually, I think last time we were here was as Architectural Review Board. You approved our elevations and gas canopy.

Of course subsequent to that we received preliminary site plan approval which had several conditions, primarily to go and obtain the outside agencies, the septic and DOT approvals.

We did resubmit for final site plan approval with copies of a letter from DOT approving the access point. We're in the process now of a land donation with them to facilitate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

30

some of the road improvements that we propose as part of the site plan application. They've essentially approved our driveway and our access point and the road improvements at this point.

We did submit two forms of the septic approval, one of which is at the State level and the other which is at the County level. I know there was question about the County approval letter. At this point we have a stamped set of plans from the County that we can provide. I think we provided copies of it. We do have an original. We did ask them in a letter and they directed us to those stamped set of plans. At this point we feel confident that we have those plans signed off on.

We went through a course and had a couple clean-up items, primarily as a result of your professionals' review during the preliminary site plan approval, which we addressed, and I think we're about ninety percent of the way there. There are one or two minor open items which I'll address in a minute.

And then of course we didn't want to make it too easy. Quick Chek has actually asked

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

31

for one or two minor changes as it relates to the site plan, which in my opinion are relatively minor. They don't really change the substance of the application but I want to make sure the Board is aware. We did outline it in our letter. Essentially there's three changes, one of which is to change the light fixture type to an LED light fixture. Essentially the design, again, is very consistent. It's just really the fixture type. It has different distribution and different throws as a part of that. We did move some light poles around but the light heights and everything still comply, and we're still using generally the same lighting fixtures. I believe everything will look pretty consistent. Of course there's an environmental benefit as a result of that, so I believe that's a positive change.

The second change, briefly, was that we took the number of columns on that canopy -- just having built a couple of these in Orange County over the last couple years, there's a feeling it was a little bulky in terms of the brick columns. Prior to really coming to Orange County, Quick Chek had more of a traditional gas station image

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

32

with the steel columns. Coming to Orange County and some of the facilities in Ulster County, they started building brick columns around the steel to hold up the canopy. We've essentially just reduced the number of columns by two. We've retained the brick housing around the steel, but instead of having essentially two columns at each pump there's now just one. Structurally it was an overdesign to have two. It was an attempt at an architectural feature that they think they would like to change at this point and really just lighten it up in terms of the number of columns.

The third change is in the underground fuel storage tanks. Really there's two prominent types of tanks that gas station operators use. There's a fiberglass style tank and a steel tank. I believe I spoke at the original hearing about the steel tanks that we were utilizing. Quick Chek would actually now like to change to the fiberglass tank. As most would see it, they're really a comparable or equal product. They're warrantee'd exactly the same, whether it's fiberglass or steel, in terms of an operator or a

1 municipality or a review agency. That to me is
2 the most critical point because those
3 manufacturers essentially -- if there was an
4 advantage gained by longer warrantee, you'd
5 better believe one of them would put it out there
6 because it would start selling better. I think
7 that really having the two competitors look at
8 each other and really can't -- they both have the
9 same warrantee there, I think it's the strongest
10 statement in terms of the fact that they truly
11 are an equivalent product. So we would like to
12 make that change as well.

14 I think I wrote a quick list on the
15 open items, just cross referencing the
16 professionals' letters.

17 Maybe before we jump to them I'll just
18 hit a couple of them head on in terms of what our
19 plan of attack is.

20 I think, Karen, we have two open items
21 with you, one being the fence and one being the
22 screen on the HVAC equipment. We specified and
23 spoke a lot about screening the rooftop equipment
24 on the Quick Chek with a barrier, with also an
25 acoustical component. There's a visual screen as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

34

well as an acoustical benefit from that. I think we specified charcoal, or the architect did, and I think you wanted gray to match the shingles. Do I have that right?

MS. ARENT: I thought the color was fine, actually.

MR. MARTEL: Great. Strike it off. I apologize. I misunderstood. That sounds like the charcoal --

MS. ARENT: It looked on the rendering like it's the same color.

MR. MARTEL: It's intended to match the shingle, the gray shingle.

MS. ARENT: I thought that it was fine.

MR. MARTEL: Beautiful. The other item I think we had open, Karen, was the fence location. I think our office had sent you a plan and I just want to make sure we have it correctly shown. I've just printed this in black and white to give a visual. We did omit the fence that we promised the Board and the public on the preliminary hearing on the plan. That was a mistake on our side, so we sent Karen a sketch of where she would like to see it. I just want to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

35

make sure I have this right now. The location where the blue highlight is, is that the correct location?

MS. ARENT: You sent me two sketches. If you don't mind setting the fence in a little bit from the property line, the Board would like that. It should extend all the way to the end.

MR. MARTEL: I think the sketch showed it stopping at the wood line.

I would like to represent to the Board, if Karen would give her blessing, is the location in blue here, which is essentially from the edge of the driveway and our neighbor's property up to our eastern most property line. We'll inset it from the property line as we locate those fence posts and what have you because we're going through a vegetative area. The premises will offset it two feet, three feet off our property line. It's clearly on our property line running that entire southern boundary.

There is a Town easement that we conceptually agreed to at the last meeting to maintain an agreement with that. We've had several conversations with Mr. Osborne, the town

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

engineer, again stating that we're okay with the easement. He has provided us a sketch with it. Quick Chek did express some concerns as to what the impact would be on their property. At this point, for the purpose of this Board, I would again just like to reiterate we will grant this easement. The Town has not really finalized its plan so it's difficult for us to draw lines on a plan and say that is the easement because there's things with stability coming down the slope and, you know, the use of stabilizing measures and what have you I don't think have been designed yet by the Town.

I think, Pat, you may know more than I.

At this point, again, we're agreeable to it. We continue to work with Mr. Osborne and will grant that easement once it's been designed and it's ready to be granted. We wanted to give a quick update there.

And then we owe, of course, the Town a number of bonds and agreements. We owe a couple of cost estimates for the purpose of bonding estimates and we owe an operations and maintenance manual for the purpose of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

37

stormwater management, which I'm sure Pat's office will review and approve on behalf of the Board.

So at this time, of course I'll defer to the Board, but essentially what we're asking for again is final site plan approval with the conditions carried over as appropriate -- Mr. Donnelly feels appropriate from the preliminary. A couple of these loose ends may make sense to be made as a condition again. Our goal, knock on wood everything goes right, is to break ground in July for the facility and try to beat -- you know, get some of the heavier construction work in while the weather is good, the earth work and of course the foundations and what have you.

So with that said, I'll turn it over to you, Mr. Chairman, or the Board.

CHAIRMAN EWASUTYN: Thank you for inviting us.

MR. MARTEL: I could have went another couple minutes. I won't lie to you.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: The advantage of going fiberglass to steel?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

38

MR. MARTEL: You know, I'll be totally honest with you, not much gained either way. They're structurally equivalent, corrosion protection equivalent.

MR. GALLI: Cost?

MR. MARTEL: The cost is a little bit cheaper in terms of the purchase of it but possibly a more expensive installation because the one primary advantage to the steel is physically the weight of the steel. It's probably four times the weight of the fiberglass. What happens is, during construction especially, and even in a final state, you might use, and you probably will use, more anchoring and ballasting for the fiberglass tank. The deadmen that hold it down, the straps -- you're familiar with the tank. You put straps over it and you put concrete that you strap it to to essentially keep it in the ground during construction, especially before you backfill and what have you. You also might fill the tank with water and be pumping it in and out and what have you just to give it some weight. With the steel tank you may be afforded a little more freedom there because physically

1 the weight of the tank itself will help keep it
2 in the ground. They're structurally equivalent in
3 terms of their final, you know, construction once
4 it's covered and backfilled and the concrete mat
5 support.
6

7 Corrosion protection is probably the
8 one downfall of the steel tank. Obviously it's a
9 metal product. They have to put the corrosion
10 protection, it's not naturally -- it is
11 susceptible to corrosion so they apply protective
12 coating on the steel tank to keep it from
13 corroding. The fiberglass didn't have that
14 issue. You're essentially trading the weight of
15 the tank versus the corrosion. The steel tank is
16 probably superior in terms of the weight and
17 being able to have a little more ease during
18 construction, or the guy who is putting it in the
19 ground probably feels a little better putting in
20 the steel tank during construction until it's
21 backfilled. The long-term concern is the steel
22 tank has the corrosion, which you don't have that
23 concern with the fiberglass. It's really kind of
24 a user preference type scenario because they are
25 both accepted, both warrantee'd the same.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

40

Quick Chek is gone both -- they've installed both to be totally honest. Herco is the manufacturer that uses fiberglass, and they have used Highland which manufactures the steel tank.

MR. MENNERICH: In both cases are they double tanks?

MR. MARTEL: Very good question. I should have mentioned that. In both cases they're double wall and all the monitoring is absolutely identical. The ports go into the ground, the interstitial monitoring, the double-wall capacity. Everything is identical. Other than the material, they truly are an identical product.

MR. MENNERICH: Thanks. One other question. What type of fence are you proposing for the southern property there?

MR. MARTEL: It's either board on board or stockade. I think we wanted a wood fence.

MS. ARENT: We spoke at work session, and what your representative agreed to here at the meeting was board on board. The Planning Board spoke about having a long-lasting fence, an

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

earth tone color, so more of a --

MR. MARTEL: So not wood?

MS. ARENT: Not wood but an earth tone.

MR. MARTEL: An earth tone composite
fence?

MS. ARENT: Right.

MR. MARTEL: Okay.

MS. ARENT: Your consultant also
e-mailed me a drawing of the fence not going
through the wooded area at all. I don't know if
that's still on the table. If it is, the
Planning Board would prefer that.

MR. MARTEL: Yeah. That's obviously
why I brought the highlight. What we had sent
you stopped and I just wanted --

MS. ARENT: It stopped but also there
were two versions, one from the property line and
one from about six or seven feet away from the
wood on the edge of the wood line. So if that's
still on the table, that's what the Planning
Board would prefer.

MR. MARTEL: Okay. So --

MS. ARENT: And we also need a detail
of the fence on the drawings, please.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

42

MR. MARTEL: We'll definitely provide the details.

Just to summarize, we have an earth tone composite fence, six foot high --

MS. ARENT: Yes.

MR. MARTEL: -- from the southeastern corner to the driveway -- existing driveway for our neighbor at the southwestern corner. We'll be inseting it how many feet from the property line?

MS. ARENT: It's where you're showing the wood line.

MR. MARTEL: Okay. Right at the wood line. Okay.

MS. ARENT: Your consultant was afraid to go down and inventory trees so he thought that might be a good idea, and the Planning Board liked that idea.

MR. MARTEL: Okay. Great.

CHAIRMAN EWASUTYN: Any additional?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: My questions were all about the fence and stuff.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

43

You are going with the fiberglass? Is that what you're recommending is the fiberglass.

MR. MARTEL: Yeah. We've asked for the change. We initially represented steel. We're asking for the Board to allow us that change to fiberglass.

MR. FOGARTY: Good.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: My questions were answered by Karen.

Another thing was I'm happy with the lights, how you changed those. They look very nice.

MR. MARTEL: Great. Thank you.

CHAIRMAN EWASUTYN: Karen, are you finished with your review?

MS. ARENT: We need a landscape cost estimate. On all your correspondence regarding bonding and the cost estimate, please use the Town project number.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: The applicant addressed all of my comments.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

44

CHAIRMAN EWASUTYN: Okay. Pat Hines, Drainage Consultant?

MR. HINES: We received a revised drainage report which was reviewed by my office and we will be issuing the MS-4 acceptance form for signature by the town supervisor.

We received approvals for the septic systems, those are fine, both the Orange County and the DEC.

The notes requiring submission of the annual report to the building inspector are on sheet 2, and I know Mike Donnelly is going to pick them up for the resolution.

The phased erosion control plan has been presented. Due to the amount of fill on the site, they gave us a phased plan which we found acceptable.

The easement issue, I know they've been working with Jim Osborne. As long as that remains a condition, that that will be worked out prior to final stamping of the plans, that's fine.

I have no problem with the change to fiberglass. I actually haven't seen any steel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

45

tanks going in the ground in several years. The fiberglass is fine.

We are also looking for bonding for the stormwater management improvements that we will review and submit to Jim Osborne's office.

That's all we have.

CHAIRMAN EWASUTYN: Jerry Canfield, Code Compliance?

MR. CANFIELD: One comment for the Board's benefit. Mr. Martel's description and explanation of the comparison was very accurate. One thing, for the Board's benefit though, is that either tank -- they're choosing fiberglass, which is good, but if they choose steel, both tanks, because of the size of them, are required to be registered with the DEC, which also requires annual testing. So it is kind of a user preference. The building code allows, and fire code allows, both tanks. I also agree with Pat, I haven't seen any steel tanks in quite awhile.

CHAIRMAN EWASUTYN: Okay. If there are no additional questions, I'll turn to Mike Donnelly, Planning Board Attorney, to give us conditions of approval for the Quick Chek

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

46

proposed gas station located on Route 9W across from Leslie Road.

MR. DONNELLY: This is final site plan. You had earlier granted ARB and actually granted preliminary site plan earlier.

The first condition is a sign-off letter from Karen Arent. I believe you still want to defer the landscaping. If so, you need to dovetail the map notes to the Town Board resolution of July 15, 2009. You can check with Bryant about that. You don't need to but if you want to, you'll have to make that change. The third condition we note is the conceptual approval was granted by the New York State DOT. We will note that a highway work permit will be required before the work can be done. This is subject to and conditioned upon ultimately delivery of the written approval from the Orange County Health Department for the grease trap. As Pat mentioned, we're going to add a fifth condition that says this approval is conditioned upon the applicant submitting to the Town a maintenance agreement ensuring the maintenance of the on-site stormwater facilities, which plan

1 shall include provision for annual inspections
2 and certifications of stormwater maintenance
3 practices to be delivered to the building
4 department. The agreement shall be satisfactory
5 to the Town Attorney. The plan shall not be
6 signed until this condition is satisfied. The
7 sixth condition requires that you comply with
8 Section 131-1 through 131-5 regarding parking lot
9 area maintenance standards. Seven, you'll need a
10 demolition permit from the town code compliance
11 department for removal of the buildings shown on
12 the plans as to be removed. We'll need two
13 easements. The first is an access easement for
14 the benefit of Manzo. It must be submitted and
15 approved by myself. The second is the drainage
16 easement that you spoke of earlier that will be
17 reviewed by the town attorney, and we'll need
18 that sign off before the plans are signed.
19 Finally, we include the standard condition
20 regarding outdoor display of merchandise which
21 simply limits the areas, prohibits sales and
22 makes sure that all walkways remain open at all
23 times. Finally, we'll need a landscape security,
24 a stormwater security and our standard condition
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

48

which prohibits the construction of anything that is not shown on the approved plans.

CHAIRMAN EWASUTYN: Is there anything additional the consultants would like to add to that. Jerry?

MR. CANFIELD: One question on the stormwater inspection. Do those securities include the inspection fees?

MR. DONNELLY: Yes.

MR. HINES: Yes.

MR. CANFIELD: The cost estimate?

MR. DONNELLY: It will, yes.

CHAIRMAN EWASUTYN: Any additional comments from Board Members?

MS. ARENT: If they need amended ARB for the change in the canopy number of -- no.

MR. DONNELLY: Is it a change?

CHAIRMAN EWASUTYN: I think they'll submit plans that will reflect that annual check.

MS. ARENT: That's fine.

MR. GALLI: The plans with the columns.

MS. ARENT: They did submit the plans but this is the latest set of drawings with the columns.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

49

CHAIRMAN EWASUTYN: I'll move for a motion to amend the original ARB approval subject to Mr. Martel presenting to Karen Arent the new canopy design. That would be a total of three less columns overall?

MS. ARENT: I'm not certain.

MR. MARTEL: There will be a total of eight less columns.

CHAIRMAN EWASUTYN: Eight less columns. Okay.

MR. MARTEL: I have a before and after if the Board would like to see it.

CHAIRMAN EWASUTYN: I don't think we'll have to see it.

MR. MENNERICH: So moved.

MR. GALLI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

50

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Thank you, Karen.

At this point I'll move for a motion to approve the Quick Chek gas station site plan subject to the conditions presented by Attorney Mike Donnelly for final conditional approval.

MR. MARTEL: Mr. Chairman, if I may. This might be out of turn here. There's two items I just want to bring up so I can sleep better tonight. The drainage easement, just so I understand it, if we're held to somebody else, you know, delaying that and that delays us signing the plans, is there any other language that may be prior to CO or something of that nature that gives us a little more time?

MR. DONNELLY: I don't know how much needs to be done. Mark Taylor says he's going to give you the language. He will prepare the easements. So that's taken care of. I think it's really just the described area. I don't think there's any other issue outstanding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

51

MR. HINES: I think we can leave it in that way. If it comes to that being the only issue, I think the Town can work out another agreement. The town attorney can work out an agreement on how that will work.

MR. MARTEL: Thank you.

The second question real quick. The highway work permit, it switched essentially a major component of how that permit is now granted. The land donation and any project requiring a land donation needs to happen prior to the highway work permit. Up until about a year-and-a-half ago you could get a highway work permit, you could build your facility, get a CO open and they would hold your bond until you actually completed that process, which could take, honestly, up to a year of which we're about six, eight months in because as soon as we got preliminary approval we started this process with them. But my question is, if the Board would be agreeable, is it something the Board would entertain where we could start site work prior to a highway work permit or a building permit, earth work, things of that nature, nothing associated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

52

with the structure in which I would understand there would be a concern with us moving ahead with the actual building without the highway work permit? Could we do the earth movement? There's about four foot fill on the property.

MR. DONNELLY: The Board's concern is whether or not, and I know it's an unlikely event but I have seen it happen, that the DOT ultimately doesn't approve the configuration the way you've shown it on the plan. The language of the condition says in that event you have to come back for amended approval. So I think we want to be cautious about allowing you to do work that will locate the driveways until you really have the work permit from the DOT. If you're talking about on-site grading, you could always get a clearing and grading permit. You don't even need that.

MR. MARTEL: So to be clear, because I think that's all I'm asking, we would stay out of the right-of-way a hundred percent. If we just limited the improvements to soil. No structures, no curbs, no stone or anything of that nature.

MR. DONNELLY: There are certain

1
2 thresholds of the clearing and grading permit
3 under the Newburgh code that might require that
4 you return to the Planning Board. Most of the
5 clearing and grading permits can be issued by the
6 building department.

7 MR. HINES: This one is a substantial
8 clearing and grading activity.

9 MR. CANFIELD: Because of the amount of
10 fill, it undoubtedly would surpass the threshold
11 that would require it to come back before the
12 Planning Board for approval. So you'll be back
13 here anyway.

14 MR. DONNELLY: That would be the
15 procedure if you wanted to do that. There aren't
16 a lot of conditions that have to be satisfied.

17 MR. MARTEL: The scariest one is the
18 highway work permit. So if it's possible to do
19 something tonight that would kick it to the
20 building department for just soil earth work. We
21 understand we're asking a lot of the Board, but
22 we'd limit it.

23 MR. DONNELLY: Let me read the
24 language --

25 CHAIRMAN EWASUTYN: Let me ask you a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

54

question. I thought when we approved a site plan we approved clearing and grading and everything associated with it.

MR. HINES: You did, but one of the conditions we're putting on is the issuance of a highway work permit because the access to this site is off the DOT right-of-way.

MR. DONNELLY: Actually, it doesn't say -- let me read the language of it. Maybe it's not a problem to you. I'll paraphrase it. Let me read it. "The New York State Department of Transportation granted conceptual approval to the proposed driveway utilization on January 28, 2011. This approval is subject, however," this approval meaning the Planning Board approval, "to issuance by the New York State Department of Transportation of a highway work permit for the driveway utilization in substantially the same location and configuration as shown on the plans. Should the work permit ultimately issued by the New York State DOT require changes in either the location or configuration from what is shown on the plans, the applicant must return to the Planning Board for further review." So it doesn't

1
2 say you have to have the permit in hand before
3 the plans can be signed, but if the permit that
4 they ultimately issue changes the location,
5 you're going to have to come back in.

6 MR. MARTEL: Null and void.

7 MR. DONNELLY: I think that language
8 isn't going to present that problem to you.

9 MR. MARTEL: Great. Thank you very
10 much. I appreciate everybody's time.

11 CHAIRMAN EWASUTYN: I'm waiting for you
12 to tell us what to do next. Sorry to interrupt
13 you. I'm speechless without you.

14 I think we have a motion for
15 conditional final approval made by Ken Mennerich.
16 I think we had a second by Frank Galli. Is that
17 correct? Any further questions or comments from
18 anyone?

19 (No response.)

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

22 MR. GALLI: Aye.

23 MR. MENNERICH: Aye.

24 MR. FOGARTY: Aye.

25 MR. WARD: Aye.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUICK CHEK

CHAIRMAN EWASUTYN: Myself yes. So
carried.

Thank you, Jeff.

MR. MARTEL: Thank you very much,
everybody.

(Time noted: 7:53 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: June 2, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

STARBUCKS COFFEE COMPANY
(2011-09)

1282 Route 300 - Palmerone Farms
Section 97; Block 2; Lot 34
IB Zone

----- X

CONCEPTUAL SITE PLAN & ARB

Date: May 5, 2011
Time: 7:54 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: CHRIS BOYEA

----- X

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

1
2 MR. GALLI: Next on the agenda is
3 Starbucks Coffee Company, 1282 Route 300,
4 Palmerone Farms, Section 97; Block 2; Lot 34,
5 being represented by Chris Boyea of Bohler
6 Engineering for conceptual site plan and ARB.

7 MR. BOYEA: Good evening. My name is
8 Chris Boyea, I'm with Bohler Engineering out of
9 our Albany, New York office. Happy Cinco de Mayo,
10 yesterday. We're here tonight asking for amended
11 site plan approval. Actually, it's a revised or
12 updated site plan approval and amended
13 architectural review for a previously approved
14 Starbucks that was to be located at the Palmerone
15 Farms location. I think everybody is familiar
16 with that. It's at the corner of 17K and Route
17 300.

18 The application that's before the Board
19 tonight -- I do have a rendered site plan. It is
20 exactly the same, from a site plan standpoint, as
21 was reviewed and approved by this Board a few
22 years ago.

23 The extent of the curbing that you see
24 out here is all installed and is out there today.

25 Just to orientate you a little bit,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Longhorn Steakhouse is up here and Chili's is down there. Starbucks is facing the road over here.

We would have a two-lane travel way around all sides of the site with a single-lane drive-through that wraps around the back.

Landscaping is going to be installed around the site. We mimicked the approved landscaping as much as possible from the original approval. It's rendered and shown on this site.

Again, there's really no change to the layout. There's a patio out front. There was a patio out front of the original Starbucks.

There is municipal water and sewer here.

This is the last pad site to be developed in this development. All utilities have been stubbed underneath the pavement into the green area that's out there today. So water, sewer, gas, electric, it's all ready to go.

There have been some comments issued by the design professionals and consultants. As well as we were aware, just from discussions, traffic and parking was probably going to be a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

repetitive comment as it was.

This Starbucks fits in well with this facility. The overall plaza, as noted with the consultants' reviews, it really doesn't compete at the same time as the other businesses that are in this plaza. Starbucks is, as everybody knows, very well known for coffee, but they also serve some pastries and fruit and things of that nature as well. It's more geared for breakfast, for the rush hours, than it is at nighttime or lunch. So it would not be competing with Chili's and Longhorn for those types of parking spaces.

It will comply, there was another comment or two, with signage. This project was granted the right to have 115 square feet of signage for the building. We do have some elevations that we'll review here tonight as well. We will agree not to exceed the prior agreed to 115 square feet.

Just in general, we wish we had a Starbucks here years ago, but with the economy and -- I'm not sure how many people follow the Starbucks stock but it did take a hit and it hurt bad. There were quite a few locations that were

1
2 only open for a year and then they closed them.
3 So they have a new design out, a new image that
4 they're portraying with this building and this
5 model. They're moving forward. Their stock is
6 doing very well now. They are looking at other
7 locations. The deal has changed here. Obviously
8 their amount of financials are less when they
9 enter a deal but the landowner and the developers
10 really wanted to bring Starbucks back here.
11 Actually, this is going to be one of the first
12 Starbucks they're going to build in New York
13 State again, ground up, since the economy
14 suffered a hit. So we're pretty excited that
15 Newburgh is the location that they chose to help
16 bring back and put up their flag and start
17 running again.

18 I'd be happy to go through the
19 consultants' comments one by one if you'd like.
20 There's nothing in those comments that we really
21 can't agree to and/or accommodate. I'll just
22 quickly breeze through them if I could, just to
23 make sure it's thorough and complete.

24 For Patrick Hines, the sanitary sewer
25 stub will be -- it's already actually into the

1
2 site. He had asked that we not connect to a
3 manhole. The stub is actually already in there
4 with a two-by-four marking it. We're going to
5 use the stub that was installed for the site.

6 Sprinkler systems. I never really
7 received a comment from Mr. Canfield but we do
8 know that this building has to be fully
9 sprinklered, and it will be fully sprinklered.
10 We do know there is an adequate water source
11 that's been stubbed to the pad site this spring.

12 Mr. Cocks' comments. Patio furniture,
13 we did bring some -- if the Board would like to
14 see it, I did make four copies of the patio
15 furniture that's being proposed. I do have some
16 cut sheets. I'll hand that out. It's not too
17 exciting. It's like shopping for furniture in
18 your backyard. Again, I've only got a couple
19 copies here. I just wanted to share it. In
20 general, it is galvanized steel tables and
21 aluminum framed chairs that are out there so that
22 they can weather the storm and the use fairly
23 well.

24 Again, the site amount won't change
25 from the previous approval.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

There was a comment about parking. Again, this does not compete with other parking spaces. It was noted that there was a prior negative dec for SEQRA during the original approval of this facility and that the site hasn't changed.

Creighton, Manning did issue a comment letter. Again, we're not going to compete with the parking spaces, so it's a good fit. This was part of the original traffic review and assessment that was done for the overall center as it was anticipated that Starbucks was going to be built years ago originally. So it was already part of that. The parking on site has been provided. That meets code.

Karen had comments. She wanted some notes changed. We'll gladly revise those. Again, a warrantee, we'll make sure that gets removed because it's going to be a warrantee for two years. We had another note in there. We propose some azaleas and rhododendrons. Starbucks likes those.

MS. ARENT: That's fine.

MR. BOYEA: We would like to keep

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

those.

MS. ARENT: Sure.

MR. BOYEA: The planters, you had a good question. It wasn't detailed as to what kinds of planters these are out front here that we're planting in. They're going to be flush so there's not a trip hazard.

Before I jump on to the last piece, which is architecture, I just wanted to note some issues about parking. Well, I got down here early from Albany and I did go to the site. I took a look because I was interested to see about noncompeting businesses and how it would function. It makes a lot of sense but I just wanted to look at it as well. In general, Starbucks would need ten parking spaces. It's noted in Creighton, Manning's letter maybe in peak, when they're really busy, it would be eighteen parking spaces that they're looking for. At 6:15 p.m. tonight, which is obviously the busiest dinnertime, or approximately one of the busiest dinnertimes, and I will point out Cinco deMayo with Chili's, it should be one of their busiest times that they're there, there was

1
2 nineteen spaces free within the vicinity of which
3 is highlighted here. This is what I'm calling the
4 vicinity. There were nineteen spaces there and
5 there were thirteen spaces around the curve,
6 around this pad site that were free. And then at
7 6:30 there were seventeen spaces in the vicinity,
8 ten spaces around this curve. And then at 6:45
9 there were fifteen spaces free in the vicinity
10 and nine spaces around the curve. So all times
11 during even their busiest times, and of course I
12 came here so I didn't get 7:00, but there seems
13 to be adequate parking there, and it would be a
14 nice fit. Again, this is dinnertime, this would
15 be their slow time, but we still want to have the
16 parking there.

17 As far as the architecture, we did
18 submit some rendered elevations, and these are
19 the same that were submitted, just so everybody
20 is on the same page. It changed a little bit
21 from the original design. Again, I think it's
22 important that this is the new Starbucks that
23 they're rolling out. This is their shape that
24 they're looking for. It's a little different,
25 and I think that maybe to some extent it should

1
2 be. I mean this is a new economy, they're moving
3 forward, they have a newer design. We did modify
4 it slightly. The modifications that we made are
5 with the EIFS and the coloring of it because it
6 matches, or it's intended to match the plaza
7 that's behind it. So if you look at Longhorn,
8 which is right next door, it's got a brick veneer
9 on the bottom and then it's got EIFS above. If
10 you look at the plaza, the strip retail center in
11 the foreground and the background, it's brick
12 veneer and EIFS above. My rendering shows this a
13 little bit lighter than it probably needs to be.
14 The plaza is actually a little bit more tan or
15 cream. We could match that, if the Board wanted
16 us to go to that level to match exact. Starbucks
17 might prefer it a little bit lighter as it is.

18 There will be awnings over the windows.

19 Again, the signage is shown here on the
20 site plan -- on the building elevations. It
21 would not exceed the 115 square feet that's
22 approved.

23 This is the side that faces the main
24 street, so this would be the most visible from
25 the street. It's this smaller and narrower side

1
2 of the building that's got the word "Starbucks"
3 with the word "drive-through" here. Again, the
4 sign is white in general so it's hard to see,
5 unless it was at night, it would pop a little bit
6 more. And then this is the drive-through side
7 that would face Longhorn Steakhouse.

8 So we're excited to be part of this --
9 one of the first Starbucks to ground up, to come
10 right up out of the ground, and we're here
11 tonight to answer any questions and hopefully
12 address any of the consultants' comments and move
13 forward with amended or revised approvals as the
14 Board sees fit.

15 CHAIRMAN EWASUTYN: Frank Galli,
16 Planning Board Member?

17 MR. GALLI: Nothing on the site plan,
18 John.

19 On the ARB, the white sign there, is
20 that going to be lit?

21 MR. BOYEA: All signs are proposed to
22 be lit.

23 MR. GALLI: They used to have the green
24 color.

25 MR. BOYEA: It's interesting that you

1 brought that up. They have a new logo, Starbucks
2 does. Really you would never notice it.
3 Somebody who drinks Starbucks a lot might notice
4 it or look at it. This is their new logo. It's
5 changed just so slightly. They used to have the
6 word "Starbucks" around it, now it's just their
7 image.
8

9 CHAIRMAN EWASUTYN: We could pass this
10 around.

11 MR. BOYEA: We changed it again. I'm
12 not sure where you got that around here
13 because --

14 CHAIRMAN EWASUTYN: I'll quiz you. I'll
15 quiz you. How many locations in Manhattan like
16 you're proposing here are open twenty-four hours
17 a day?

18 MR. BOYEA: I have no idea.

19 CHAIRMAN EWASUTYN: Take a guess.

20 MR. BOYEA: Twenty-four hours a day,
21 open in Manhattan? I would say probably four.

22 CHAIRMAN EWASUTYN: Less than that.
23 Actually only one at this point. When they had
24 their downturn, the one on 15th Street and
25 Broadway had been opened twenty-four hours a day.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

When they had the downturn, it's now changed.
The only one that's actually open twenty-four
hours a day is on 42nd Street.

MR. BOYEA: A new logo, yes.

MR. GALLI: I was just curious what the
sign was going to look like in front of the
building.

I'm sorry. Is there going to be a sign
-- there's no signs out in the road now. Okay.

MR. BOYEA: There is. There is
approvals for panels on the existing signs that
had been approved, the bigger shopping center
signs.

MR. GALLI: Okay. I do have a question
on the site plan, actually. Is that going to be
part of the -- on the site plan, is this going to
be -- when you submit the site plan is it going
to have that road omitted, the 17K entrance?

MR. BOYEA: That's correct. It's as is
today, which there's a curb across there.

MR. GALLI: That was it, John.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: On the original site
plan wasn't Starbucks part of the strip part of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the mall rather than this pad site?

MR. BOYEA: I don't believe so.

MR. GALLI: It was always a pad site.

MR. MENNERICH: I have no other questions.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no questions.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: With the air conditioner on top, will there be any type of coverage?

MR. BOYEA: Actually, I looked at that today. It was actually a comment I think of Karen's, what would we do to help screen that. I walked up on top of the hill that's in front of the Chili's and Longhorn, and it's tough to see those units. If you're looking for them you can find the top of them. What they did, it appears, Longhorn, is they painted the tops of the -- well they painted the whole unit. It really blended in quite well. I mean I was looking for them. I can answer the question that they were painted. We could do the same.

MR. WARD: We're trying to coordinate the whole area.

1
2 The other question I had is with the
3 tables. Believe it or not, I know with the
4 Starbucks in New York you have the round tables.
5 The rectangular tables, where would you be
6 putting that?

7 MR. BOYEA: You know, actually that's a
8 good question.

9 MR. WARD: The round tables, you sit
10 there, you're enjoying it better, you have more
11 space with people.

12 MR. BOYEA: I better stop you so we
13 don't dig a hole. The square tables are required
14 for handicap accessibility. It was funny, I
15 looked at the same thing and sometimes you don't
16 think about that. With the round you can't get
17 close enough to it, so there is actually a spot.
18 If you have a patio --

19 MR. WARD: That answered it.

20 MR. BOYEA: Good question. I had to
21 ask the same question before I came here tonight.

22 CHAIRMAN EWASUTYN: Okay. Jerry
23 Canfield, Code Compliance?

24 MR. CANFIELD: I had no comments. Just
25 the one, the four-inch proposed sprinkler line

1 that Pat mentioned should be plenty. It's a
2 small building. The demand of the sprinkler
3 system will be relatively small. So it should be
4 adequate in size. That's all I have, John.
5

6 CHAIRMAN EWASUTYN: Pat Hines?

7 MR. HINES: I had a comment on the
8 sewer lateral but if it's already installed, I'm
9 fine with it. I'm not going to dig up the
10 parking lot to change that.

11 CHAIRMAN EWASUTYN: Bryant Cocks?

12 MR. COCKS: One request was to put the
13 signage chart on the drawings so the building
14 department has it.

15 I also had a question about the tables.
16 Since the site is going to be open twenty-four
17 hours a day, are these tables going to be taken
18 in at 9:00 at night or are they going to be left
19 out there all the time, because they're not
20 permanent fixtures so --

21 MR. BOYEA: I should preface it that
22 Starbucks would like the right to operate the
23 site twenty-four hours a day. They might only
24 operate the drive-through twenty-four hours a
25 day, or they might close it and not operate

1
2 twenty- four hours a day. For a financial sense,
3 they want the right to operate it twenty-four
4 hours a day.

5 As far as the tables go, the tables
6 will be out there, you know, during the season I
7 guess -- twenty-four hours a day during the
8 season. So they would not bring those in every
9 day.

10 MR. COCKS: Okay. So even if they
11 close at 11:00, they're going to leave tables
12 that can be moved around out there?

13 MR. BOYEA: That's correct. I mean they
14 could fasten them down to the concrete with some
15 anchor bolts.

16 CHAIRMAN EWASUTYN: I think you ought
17 to check into that. I've known a few in this area
18 where they bring them in at night and pull them
19 out. I would just make it a point. I know the
20 one that Frank and I were talking about, they
21 bring them in and bring them out, in Fishkill.
22 I'm not quite sure whether they would want to or
23 not.

24 MR. BOYEA: Okay.

25 CHAIRMAN EWASUTYN: Karen, any final

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

comments?

MS. ARENT: If you could label the HVAC units on the drawing, or just make a note on the drawing that they'll be painted to match the parapet of the building.

John brought up a question for the Board, whether you cared if the building is darker to match the plaza or if it stays the light color shown on the drawing?

CHAIRMAN EWASUTYN: I think that's a preference up to the applicant.

MR. GALLI: I don't have a preference.

MS. ARENT: No preference.

MR. MENNERICH: Just a question. On the lighter color, with it located so close to two major roads it will tend to get that black sooty stuff on it. Do they have a maintenance plan where they wash the building or --

MR. BOYEA: Starbucks in general has a maintenance plan where they maintain their building. I don't know how often they wash it but it is on their list to do. It's a good point and I can point that out. I think the intent is that it will fit in well with the earth tone

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cream/light cream EIFS that's out there today.

CHAIRMAN EWASUTYN: Karen, there's a landscape cost estimate?

MS. ARENT: Yes. You need a landscape cost estimate.

On all correspondence, please use the Town project number.

CHAIRMAN EWASUTYN: Mike Donnelly, Planning Board Attorney?

MR. DONNELLY: This is an amended ARB for the Starbucks building that had earlier received ARB approval. I thought, from my discussions with Kevin Dowd, there was also going to be an amended site plan for Newburgh Retail Development that showed the closure of the Route 17K accessway. You may remember that back in 2008 when we had given the most recent of the amended approvals, the issue of where we were going with that was built into the resolution. There was a condition that required you to continue to pursue the access across the Thruway lands to the site, and the purpose was that if you eventually were unable to do that, you would then, and I'm reading from the minutes, Ken

1
2 Mennerich speaking, you'd have to return with an
3 amended site plan taking the 17K entrance off,
4 but at least the applicant would have to explain
5 why it didn't work out. It seems to me we're now
6 at the juncture where that hasn't worked out.

7 MR. BOYEA: That's correct.

8 MR. DONNELLY: The approved site plan
9 shows that accessway. We really should have an
10 amended site plan that removes that accessway so
11 it's no longer on the approved plans filed in the
12 building department.

13 MR. BOYEA: Right. Yes.

14 MR. DONNELLY: How are we going to
15 accomplish that?

16 MR. BOYEA: On the site plan that we
17 submitted today, it does show an overall --

18 MR. DONNELLY: The area map.

19 MR. BOYEA: It shows the overall site
20 plan with that connection not in place. I do
21 know, and I asked the question to the developers
22 that are servicing the overall plaza, and they
23 told me they were not able to reach a conclusion.

24 MR. DONNELLY: I think we're aware of
25 that now.

1
2 MR. BOYEA: And I think it was probably
3 due to some costs as well as some other factors
4 that they had.

5 MR. DONNELLY: The question then is is
6 that satisfactory to the Board that on the inset
7 diagram it shows the -- I'm not trying to stand
8 on ceremony here, it's not the same as the
9 original site plan, but I guess it makes clear
10 that the 17K access is gone. If that's
11 satisfactory to you, then I'll read the
12 conditions in the resolution.

13 CHAIRMAN EWASUTYN: Is that
14 satisfactory?

15 MR. GALLI: Yes.

16 MR. MENNERICH: Yes.

17 MR. FOGARTY: That's fine.

18 MR. WARD: Yes.

19 MR. DONNELLY: Then this is an amended
20 site plan and amended ARB for Starbucks. The
21 SEQRA was taken care of before. It's a negative
22 declaration. This was referred to the Orange
23 County Planning Department with a local report
24 recommendation. We will need a sign-off letter
25 from Karen on the comments in her most recent

1
2 memorandum. We'll have a condition that carries
3 over all of the prior conditions into this one
4 except as they no longer apply. We'll have the
5 standard ARB condition for this amended ARB
6 approval. There will be a requirement of a
7 landscape security and inspection fee. There
8 will not be any other bonding required at this
9 time. Then we'll have a condition regarding the
10 parapet wall that requires that the rooftop HVAC
11 units be painted to match the parapet wall in
12 order to minimize the visual impact. Then we'll
13 have our standard condition about nothing other
14 than what is shown on the plans may be
15 constructed.

16 CHAIRMAN EWASUTYN: Would the
17 consultants like to add anything to the
18 resolution Mike Donnelly just presented?

19 MS. ARENT: I just have one question.
20 There's no HVAC units shown on the architectural
21 drawing, so we're not really sure how much the
22 parapet is going to hide. On those other
23 buildings the parapet was a little higher than
24 the HVAC units and they color matched. If the
25 parapet is only like half a foot tall and the

1
2 HVAC units are four feet tall, they're going to
3 be much more visible than the other units. We
4 really should see these HVAC units to see how
5 much they protrude above the parapet. The ARB
6 conditions also state that you can't put anything
7 in if you don't show it on the drawing. I'm just
8 a little concerned about the fact that we don't
9 see the HVAC units on the drawing and we don't
10 really know what the relationship between those
11 and the parapet is. Chili's and Longhorns, they
12 have fairly decent size parapets.

13 MR. BOYEA: I can appreciate the
14 comments. I actually did do the Chili's design
15 here in front of this Board when the Chili's was
16 approved. The Chili's plans didn't show any
17 HVACs from an elevation standpoint. You're at
18 ground level when you look at this, the same as
19 the Chili's.

20 As far as the height of the building
21 goes, this building is going to fit height wise
22 in with Longhorn and Chili's, which is
23 approximately 20 to 22 feet in height, and it's
24 confirmed just looking at it today while on site.
25 It's a good question about the height of the roof

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

deck in comparison, and I can certainly coordinate that.

MS. ARENT: It just needs to be shown on that drawing, and you just need to make sure it's similar to the other buildings that are out there, the relationship of the parapet and the top of the HVAC units, just because they're -- they work. We did have to ask for them to get painted, but --

MR. MENNERICH: Can we have a condition in the resolution that Karen sign off on the --

MR. DONNELLY: Right.

CHAIRMAN EWASUTYN: Okay. Any additional comments?

(No response.)

CHAIRMAN EWASUTYN: Then I'll move for a motion to grant --

MR. DONNELLY: Amended site plan and amended ARB.

CHAIRMAN EWASUTYN: -- thank you -- for the Starbucks Company location on Route 300 known as Palmerone Farms.

MR. WARD: So moved.

MR. FOGARTY: Second.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN EWASUTYN: I have a motion by John Ward and 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. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried. Thank you.

MR. BOYEA: Thanks so much for your help with this one. We appreciate it. Hopefully we won't have to go too far for a Starbucks coffee.

(Time noted: 8:20 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: June 4, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

----- X
In the Matter of

PROPOSED LOCAL LAW 163
"SUBDIVISION OF LAND"

Discussion by Michael Donnelly, Esq.

----- X

BOARD BUSINESS

Date: May 5, 2011
Time: 8:20 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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

1
2 MR. DONNELLY: The Town Board has
3 actually sent you three separate local laws they
4 have under consideration and asked you to report
5 any concerns or recommendations you have in
6 regard to them.

7 The first is, at long last, the
8 proposal to amend the subdivision regulations,
9 Chapter 163, to add to the code with formality
10 that which you used to do informally, and that is
11 creating a subspecies of subdivision called a lot
12 line change. It tracks the criteria that you had
13 generally used in the past by defining a lot line
14 change as any alteration of lot lines, whether or
15 not shown on a plat previously approved, which
16 alteration will result in land area becoming part
17 of an existing adjacent lot provided that no new
18 lots are created, that no nonconforming lots are
19 created, or that any existing nonconforming lots
20 are made more nonconforming. That was generally
21 the criteria that you used. It gives to you, I
22 guess, the option, when an applicant applies for
23 a lot line change, to treat it as a lot line
24 subdivision based upon how you see it impacting
25 under those definitions. There's a section

1 requiring what must be shown on the lot line
2 plan, the record owner, structures within 200
3 feet, intersections of private roads and
4 driveways, a field survey of the boundary lines,
5 a table showing current zoning, setback lines,
6 sizes of buildings, et cetera. It allows you to
7 optionally hold a public hearing but you're not
8 required to do so. I think it's a fairly
9 comprehensive law and it will return to your
10 procedures the ability for simple lot line or
11 boundary adjustments proposed to do that in a
12 quick procedure. It references a fee schedule in
13 the existing chapter, and I don't know quite what
14 that might mean because I don't think we had a
15 fee for a lot line change. Or did we, John?

17 CHAIRMAN EWASUTYN: We do have a fee in
18 the schedule.

19 MR. DONNELLY: It will dovetail in that
20 fee.

21 CHAIRMAN EWASUTYN: It references in
22 there the old standard. It talks about
23 presenting two mylars. One mylar is all we ever
24 need.

25 MR. DONNELLY: Do you want me to make

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that recommendation?

MR. HINES: Mike, does it ask for utilities, water and sewer, to be shown? We've run into that with the septic and wells on lot lines a lot.

MR. DONNELLY: Let me look.

MR. HINES: So you're not subdividing off half your septic system.

MR. DONNELLY: Information title block -- Yes. Location of existing and proposed structures, wells, septic systems, driveways, utility lines within 200 feet. All right.

The second local law --

MR. CANFIELD: Point of question on that. Does that still -- we handled lot lines as a subdivision, and if there was any existing nonconformities they lost protection, they had to reapply.

CHAIRMAN EWASUTYN: Right.

MR. CANFIELD: With a lot line change does that not hold true still?

MR. DONNELLY: I think as long as -- the way this reads, and it may not be consistent with the other section that you guys see at the

1 Zoning Board all the time, as long as you're not
2 making a nonconforming lot more nonconforming, or
3 making a conforming lot nonconforming, then you
4 can go through this procedure. Unlike that
5 provision of the article on nonconforming uses
6 that causes the Zoning Board problems where you
7 lose the protection unless you make it more
8 conforming, this takes a more logical approach,
9 that as long as you're not making it more
10 nonconforming you can avail yourself of the
11 procedure.
12

13 MR. CANFIELD: As long as you're not
14 increasing the degree of nonconformity.

15 MR. DONNELLY: Right. As long as
16 you're not increasing it, you're okay.

17 The second local law has to do with the
18 density change formula that the Town Board had
19 enacted six months or so ago. You'll remember
20 there was discussion regarding whether or not
21 certain projects should be grandfathered from
22 that. It came to a head with Golden Vista and
23 didn't get fully resolved. What this law
24 proposes to do is that any project that received
25 either final site plan or final subdivision

1 approval before November 1, 2010, which was the
2 date when the density change law was enacted,
3 would be grandfathered from the application of
4 this law. It would require a final approval. A
5 preliminary approval would not have been enough.
6 I don't think there's anything troublesome about
7 that concept. Whether some should have drawn the
8 line at preliminary or not is clearly their call.
9 At least there's some fairness built into doing
10 it at the time of final.
11

12 And lastly, in regard to the same
13 issue, the Town Board, I guess at the public
14 hearings on the law, heard concerns that when you
15 applied the net buildable area formula to certain
16 small lots, you'd ended up with a lot, from a
17 practical point of view, that was unbuildable
18 because if you have a small lot you take out a
19 steep slope area or something of the kind, then
20 your buildable area gets too small. This is to
21 try to exempt those small lot cases where the
22 effect of the law is too circuitous. In essence,
23 what it says is that where a building envelop is
24 smaller than the minimum buildable area and the
25 building envelop does not contain any DEC

1 regulated water bodies, protected wetlands, steep
2 slopes, 100- year flood plains, areas subject to
3 title inundation, rights-of-way of existing
4 public or private roads or utility easements
5 which are free of constraints may be counted
6 toward the minimum buildable area. So that if in
7 the case where the buildable area ends up being
8 even smaller than what the envelop -- in other
9 words, you measure the building envelop by
10 measuring out the sides, the rear and the front.
11 If the minimum buildable area gets smaller than
12 that, then you're allowed to exclude in your net
13 calculation the excluded areas. I think it makes
14 sense. Pat and Bryant may have a better feeling
15 for what this would mean. On small lots, in
16 unique situations, it would render certain lots
17 completely useless.

19 MR. FOGARTY: What do they mean by a
20 small lot?

21 MR. DONNELLY: Do they define --

22 MR. HINES: It depends on the geometry
23 and the environmental constraints.

24 MR. DONNELLY: I think what they're
25 triggering it to is where the building envelop is

1 smaller than the -- that isn't it. I don't know
2 how they define it. Yeah. It says if, as a
3 result of the lot's shape or configuration, the
4 result is that the building envelop is smaller
5 than the minimum buildable area I guess is when
6 it kicks in. I'd have to do it on paper, I'm a
7 visual person, to see what it means.
8

9 CHAIRMAN EWASUTYN: Comments from
10 Jerry, Bryant or Pat Hines in general?

11 MR. CANFIELD: I don't have an issue
12 with it. The building envelop is basically where
13 you take a lot and you take the setbacks and then
14 you see on your subdivision plans the dotted,
15 dashed area. That's the buildable area or the
16 building envelop. The buildable area. The other
17 that they're speaking of is if you have slopes
18 that you have to deduct away, it may make that
19 area smaller. It makes sense.

20 MR. HINES: It will make it smaller. I
21 think what they're referring to is that you have
22 that requirement to show a box -- what size is
23 that?

24 MR. COCKS: I think it's 2,500.

25 MR. HINES: A 2,500 square foot box.

1
2 In the resulting calculation, taking out the lot
3 geometry and environmental constraints is less
4 than that, then you get that box to build it.
5 That way you can build on every lot, you're not
6 saying that the lot geometry and environmental
7 constraints make the lot totally useless. I
8 don't think they mean building setbacks. I think
9 they mean if you're smaller than that allowable
10 building square, you're still okay.

11 MR. CANFIELD: I think that regulates
12 the smaller house on the smaller lot, not the
13 bigger house on the smaller lot. That's what it
14 regulates.

15 MR. HINES: It should do that. I don't
16 think it's -- it's not the setbacks.

17 MR. DONNELLY: I see. That's right.
18 The Newburgh code has the concept of the minimum
19 buildable area, that you must have at least that
20 square.

21 MR. HINES: If your calculation comes
22 up smaller, then it's that.

23 MR. DONNELLY: Okay. Thank you.

24 CHAIRMAN EWASUTYN: Any comments from
25 the Board?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(No response.)

MR. DONNELLY: Other than the recommendation on the first law that would be amended to say one mylar, otherwise we're okay?

CHAIRMAN EWASUTYN: Right.

Then I'll move for a motion to have Mike Donnelly write a letter to the Town Board acknowledging that the Planning Board is in favor of the two local laws that are being proposed.

MR. WARD: So moved.

MR. GALLI: Second.

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

MR. MENNERICH: I'm just wondering, on that last one, there was so much discussion here about what it meant, how is the public ever going to understand it?

MR. DONNELLY: I think they're defined terms. I was thinking -- in terms of what Jerry and I were thinking of, which was the buildable area in the colloquial sense. We have this thing called a minimum buildable area which is this box and you have to drop in.

1
2 MR. HINES: If you went the other way,
3 the environmental constraints wouldn't mean
4 anything because you would still have that
5 buildable area.

6 MR. DONNELLY: I think it works.

7 MR. MENNERICH: Okay.

8 CHAIRMAN EWASUTYN: I have a motion by
9 John Ward. I have a second by Frank Galli. I had
10 discussion by Ken Mennerich. Any further
11 discussion?

12 (No response.)

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

15 MR. GALLI: Aye.

16 MR. MENNERICH: Aye.

17 MR. FOGARTY: Aye.

18 MR. WARD: Aye.

19 CHAIRMAN EWASUTYN: Myself yes. So
20 carried.

21 I'll move for a motion to close the
22 Planning Board meeting --

23 MR. FOGARTY: Don't we have business --

24 CHAIRMAN EWASUTYN: That was it. I'll
25 move for a motion to close the Planning Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

meeting of the 5th of May 2011.

MR. WARD: So moved.

MR. GALLI: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

(Time noted: 8:36 p.m.)

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

1
2
3
4
5
6
7 I, Michelle Conero, a Shorthand
8 Reporter and Notary Public within and for
9 the State of New York, do hereby certify
10 that I recorded stenographically the
11 proceedings herein at the time and place
12 noted in the heading hereof, and that the
13 foregoing is an accurate and complete
14 transcript of same to the best of my
15 knowledge and belief.
16
17
18
19 _____
20
21
22
23
24
25

DATED: June 4, 2011