

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

DRISCOLL SUBDIVISION
(2005-46)

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

- - - - - X

107-LOT SUBDIVISION

Date: August 21, 2008
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

- - - - - X

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

MS. HAINES: Good evening, ladies and gentlemen. I'd like to welcome you to the Town of Newburgh Planning Board meeting of August 21, 2008.

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

MR. GALLI: Present.

MR. BROWNE: Present

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MS. HAINES: The Planning Board has experts that will provide input and advice to the Planning Board in reaching various SEQRA determinations. I ask that they introduce themselves at this time.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Fire Inspector.

MR. SZAROWSKI: John Szarowski, Engineer.

MR. COCKS: Bryant Cocks, Planning
Consultant.

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

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

(Pledge of Allegiance.)

MS. HAINES: The first item of business
we have tonight is the Driscoll Subdivision. It
is a 107-lot subdivision located on Route 300 in
an R-3 Zone. It's being represented by Ross
Winglovitz.

MR. WINGLOVITZ: Good evening. Ross
Winglovitz with Engineering Properties here
representing the Driscoll Subdivision.

As you know, this has been in front of
the Board for awhile. We completed SEQRA back in
February and the Findings Statement was issued.
At that point the preliminary review was done of
the plans. There were issues regarding road
grades which resulted in two months in front of
the Town Board resolving compliance with or
waivers for the road grades and the vertical
curves. Those were received in early July from

the Town Board. We went back for preliminary approval addressing the previous comments on July 10th, and we're here before you tonight to answer any other questions you may have.

CHAIRMAN EWASUTYN: Okay. Jerry, do you have any outstanding comments as far as the Driscoll Subdivision?

MR. CANFIELD: No. The jurisdictional fire department, Cronomer Valley, has signed off in correspondence in January with their concerns. Our concerns have been addressed. We have nothing additional.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: All the planning comments have been met at this time.

I just have a couple of my comments. Some of the outside agency approvals are going to be needed before final approval.

I believe Mike is going to go through the conditions, so it would be redundant.

CHAIRMAN EWASUTYN: I know we received correspondence from Ken Wersted, our Traffic Consultant who isn't with us this evening. He was okay with the 107-lot subdivision and the

traffic issues.

At this point I'll turn to Mike Donnelly, Planning Board Attorney, to review the resolution of approval for the preliminary subdivision.

MR. DONNELLY: When this matter was last on before you in April we had reviewed a draft of the resolution. There have been some changes to it since. We went over it in some detail earlier at the work session and I'll try to summarize it now.

Since we met in work session I received an e-mail from Mark Taylor. He raised a couple issues about the resolution and I'll touch upon those as I go. The resolution conditions are in two groups. The first are those that need to be satisfied before final approval can be granted and the second are what would become permanent conditions of the resolution that will be recited again in the final one.

First, all of the consultants' comments that are outstanding today and that will be raised with regard to the final plat will need to be satisfied before final approval can be

granted. There were certain items of outstanding details that have yet to be provided. Many of them relate to details of items that are subject to regulatory approvals from other agencies such as the DOT and the Army Corp. There is a listing of other agency approvals that are required. One of Mark Taylor's suggestions was in the section that lists the need for an approval from the Town Board for a sewer district extension, that we include within that the possible alternative for an executed outside user agreement, and I will make that change. We also added the road name approval to that section. All of the agency approvals are listed within the resolution. The applicant will be required to copy the Planning Board on all correspondence with those agencies as we lead toward final approval. The drainage district will need to be created. Road names will need to be approved by the Town Board. Street trees will have to be shown on the final plans. The Planning Board by this resolution has recommended that sidewalks and curbing be included within this subdivision. The applicant had offered that in the event that the Town Board

was not willing to take on the maintenance obligation for the sidewalks, that the homeowners association that's proposed to be created take on that responsibility. Mark Taylor's other comment was what happens if for some reason the Town is not willing to take on maintenance but the sidewalks still remain within the Town right-of-way, there might be a liability concern. The only thing I think we can say in response to that is then there will need to be an amended subdivision because the sidewalks won't be able to be included, or they'll need -- they can't easily be moved outside of the right-of-way because the size of the lots in this subdivision are consistent with those in the immediate area and would not allow the sidewalks to be outside of the right-of-way. We will have to cross that bridge when it comes. I think the Planning Board and the applicant feel that sidewalks are appropriate here, and hopefully the Town Board will agree with that.

We also need, Ross, and we talked about it at work session, it is not in the resolution but we wanted to ask you about it, the potential

pedestrian access way to the adjoining property. You were going to check further the Findings recited to see whether it was at all possible to obtain either a fee or an easement interest to cross the very small piece of land that is at the boundary of your property with the adjoining property to see if that pedestrian access connection could be accomplished. We wanted to hear a report from you as to where that stands.

MR. WINGLOVITZ: I contacted the owner several times. It's actually still in Kroll's name or a corporation owned by Kroll. I left several messages on the voicemail, did not receive a return phone call. What I'll do before final is I'll send him a certified letter requesting that and see what happens.

MR. DONNELLY: All right. As we discussed at work session, include a condition that allows the applicant to continue to pursue that alternative up until final, and if of course that is -- that permission by easement or fee is obtained as the Findings recite, you'll return that pedestrian access way to the plans as part of the proposal.

The resolution addresses the need for there to be certain traffic improvements that need to be made in conjunction with another project in the area, and that is the Polo Club. In essence the requirement is that whichever project moves first will need to complete those and neither project will obtain a CO until all of those necessary improvements are completed.

The applicant, as has recited in the Findings, will make a fair share contribution, the details of which will need to be worked out with the Town Board, to the needed traffic improvements at the intersection of Route 52 and Route 300. We have a section relating to the requirement of implementing the SEQRA Findings including requirements of financial security and either a developers agreement or undertaking delivered to the Town to carry forth those items.

Mark Taylor finally pointed out, and he refreshed my recollection that at one point in time we had talked about a conservation easement as a possibility along the rear of the property line. That would be for the benefit of the Town as grantee. I talked to Ross about it and he

reminded me that we had shifted gears and instead made that a declaration of restrictive covenant. I will add a condition to the resolution that requires that that document be recorded as part of the final approval. I think the feeling was that it was not enough of a Town-wide benefit that it should appropriately be a conservation easement. It was primarily for the benefit of the adjoining property owners and they would have enforcement rights under that restrictive covenant.

There are a number of miscellaneous easements that will need to be provided regarding cross grading and drainage. A condition is included within the resolution that prohibits the construction of retaining walls greater than four feet in height without code compliance department approval based upon engineer prepared plans. The Findings addressed an issue regarding the payment of parkland fees and the resolution carries forth the provision of the Findings that allows the applicant to present the study to the Planning Board at the time of final approval, and if that study demonstrates that the needs for

recreational and parkland amenities are met on site, that there will be no need to impose a parkland fee. If there's a Finding that the need is partially met, that leaves open the possibility of the Town fixing a partial fee rather than the full fee that's set forth in the ordinance. More than ten-lot ARB approval will be required. Obviously at the time of final approval various offers of dedication will need to be delivered and approved by the Town Board.

I believe that carries forth all of the conditions required.

CHAIRMAN EWASUTYN: Questions or comments from Board Members. Frank Galli?

MR. GALLI: When you send the letter to the owner, could we get a copy of that --

MR. WINGLOVITZ: Absolutely.

MR. GALLI: -- and the certification?

MR. WINGLOVITZ: Yes.

MR. GALLI: Thank you.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing more.

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

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

DRISCOLL SUBDIVISION

12

MR. PROFACI: Nothing. Thank you.

CHAIRMAN EWASUTYN: Any additional
comments from our consultants at this time?

(No response.)

CHAIRMAN EWASUTYN: Having heard the
conditions for preliminary subdivision approval
for the Driscoll Subdivision presented by our
Attorney, Mike Donnelly, I'll move for a motion
for approval.

MR. GALLI: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by
Frank Galli. I have a second by Ken Mennerich.
Would there be any discussion of the motion?

(No response.)

CHAIRMAN EWASUTYN: If there's no
discussion of the motion, then I move for
approval starting with a roll call vote with
Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So

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

DRISCOLL SUBDIVISION

13

carried.

MR. WINGLOVITZ: Thank you very much.

(Time noted: 7:12 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: September 4, 2008

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

SHOPPES AT UNION SQUARE
(2007-05)

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

- - - - - X

SITE PLAN

Date: August 21, 2008
Time: 7:13 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - X

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

MS. HAINES: The next item of business we have tonight is the Shoppes at Union Square which will not be reviewed. We received a letter from Adrian Goddard dated August 15, 2008. "Dear Chairman Ewasutyn, in an effort to avoid wasting the Board's time during the upcoming Planning Board meeting on August 21st, we are requesting to be pulled from the agenda. We believe we can be more productive during the September 4th meeting at which time we'll be on for ARB as well as final site plan approval. Thank you. Regards, Adrian Goddard."

The Shoppes at Union Square are scheduled for the September 4th Planning Board meeting.

CHAIRMAN EWASUTYN: Thank you, Dina.

(Time noted: 7:14 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: September 4, 2008

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

LANDS OF STEINER
(2007-38)

Corner of Frozen Ridge Road & Stacey Lee Drive
Section 106; Block 2; Lot 2.2
AR Zone
----- X

TWO-LOT SUBDIVISION

Date: August 21, 2008
Time: 7:14 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: KENNETH LYTLE
----- X
MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
(845)895-3018

MS. HAINES: The next thing we have is lands of Steiner. It's a two-lot subdivision and it's on the corner of Frozen Ridge Road and Stacey Lee Drive, it's in an AR Zone and it's being represented by Ken Lytle.

MR. LYTLE: Good evening. Since our last meeting I believe we left off that the Planning Board was going to have their consultants look into any additional comments from previous subdivisions. I believe that's where it stands.

CHAIRMAN EWASUTYN: We closed the public hearing on this subdivision on the 17th of July 2008.

I'll turn the meeting over to Mike Donnelly for a summary, our Planning Board Attorney.

MR. DONNELLY: The primary issue that was outstanding at that time, it was touched upon in my letter to the Board of June 5, 2008, related to whether or not at an earlier stage of the approval process of the lands of which this lot is a part, whether the Planning Board at that

time imposed a restriction on further subdivision. Dina, on behalf of the Board, has examined all of the earlier records that relate to the earlier subdivision. No records have been found that indicate that any restriction on further subdivision had been imposed by the Planning Board. Based upon that I included language in the findings section of the proposed resolution to that effect.

I believe there were no other outstanding issues.

You had received a report from Ken Wersted on the traffic and the visibility and glare issues that had arisen at the public hearing. The plans have been amended to allow for some widening and demarcation in that area. Ken has reviewed those plan changes, and as I understand his memo finds those to be satisfactory.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

MR. BROWNE: Ken, would you describe the widening, whatever, that you did as a result

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

of that?

MR. LYTTLE: I was a little taken aback by that. We didn't need to make any modifications to the drawing regarding any widening. We have a memo that's actually from the traffic report. We have a copy of the police report from the accident.

MR. GALLI: I think what it was is I think he wanted the grass areas, to extend them so they can walk on the -- not extend the roadway but extend like the shoulder part of the road.

CHAIRMAN EWASUTYN: He made a recommendation that they could consider that as the homeowners on that road.

MR. LYTTLE: They wanted to widen this edge. I can basically modify that for them. That's fine. I can do that. That's not a problem.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: That's all.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No additional.

CHAIRMAN EWASUTYN: Mike, can you give us conditions of approval for the two-lot subdivision for the lands of Steiner?

MR. DONNELLY: Yes. First we'll need a sign-off letter from Bryant Cocks. There were a few outstanding issues in his memo of August 14th that need to be resolved. I stand corrected on Ken Wersted's report, so we'll need a sign-off letter from Ken approving the roadway widening that he has recommended to assist in the pedestrian and glare and visibility issue in the area of the new driveway. The approval is a preliminary one and is conditioned upon Orange County Health Department approval as well as New York State DEC approval for stormwater SPDES.

MR. LYTTLE: No.

MR. DONNELLY: No?

MR. LYTTLE: Not this one.

MR. DONNELLY: Just Health Department?

MR. LYTTLE: No. Board of Health. Single lot. Pat reviewed it already and had no comments.

MR. DONNELLY: Okay. So then it's preliminary and 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

MR. LYTTLE: That's right.

MR. DONNELLY: There's a requirement that the plat, and it may be done already, be revised to show a twenty-foot vegetated buffer along the new building lot. That's shown on the plans?

MR. LYTTLE: Yup.

MR. DONNELLY: That condition can disappear then.

Before the final plans are signed you'll need to present to me a copy of the existing private roadway easement and maintenance agreement in order to ensure that what we understand the situation to be is true, and that is that this total lot is included. Since there will be no additional outlets onto the roadway, the conditions are not violated. If it's not consistent with what is in that document then a supplemental instrument will need to be recorded.

MR. LYTTLE: Okay.

MR. DONNELLY: The strip of land running along the northerly side of the property line extending to Frozen Ridge Road may not be utilized for vehicular access to Frozen Ridge

Road. Finally, the payment of parkland fees for the new lot in the subdivision.

CHAIRMAN EWASUTYN: Any further comments from our consultants?

(No response.)

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

MR. BROWNE: Nothing more.

MR. MENNERICH: Nothing.

MR. PROFACI: Nothing.

CHAIRMAN EWASUTYN: Having heard the conditions for approval for the two-lot subdivision of the lands of Steiner presented by our Attorney, Mike Donnelly, I would move for a motion for approval.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No response.)

CHAIRMAN EWASUTYN: There being no discussion of the motion, I'll move for a roll

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: September 4, 2008

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

ENTERPRISE
(2008-20)

400 Auto Park Place
Section 97; Block 2; Lot 11.2
IB Zone

- - - - - X

CONCEPTUAL SITE PLAN,
CONCEPTUAL SKETCH PLAN & TWO-LOT SUBDIVISION

Date: August 21, 2008
Time: 7:19 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: ROBERT JAMES

- - - - - 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

ENTERPRISE

MS. HAINES: The next item of business we have is Enterprise Rental Car. It's a conceptual site plan and a two-lot subdivision located at 400 Auto Park Place. It's being represented by Robert James.

MR. JAMES: What we have, this project is essentially a two-lot subdivision with two lot line revisions. We have three existing tax parcels and we will end up with four. The main subdivision is along the -- is between the Enterprise Rental Car business and the Dodge showroom, Newburgh Park Motors. Our property line runs down along the landscaped island and then along an existing chain-link fence. The Dodge lot would be 4.5 acres and the Enterprise lot would be about 3.8 acres. The other two lots that are affected, the Chase Bank we're adding about .18 acres, and we're taking away from the GM service center about .1 acres as well.

With the subdivision we have also a site plan. We are expanding the parking area for the Enterprise lot. The expansion will be roughly 30,000 square feet of pavement and we'll be stacking cars for storage in that new paved

2 area. The spaces that we've shown here add up to
3 approximately 128 spaces for storage, and then
4 maintaining as well the same number of spaces for
5 the office complex which is calculated at 63
6 spaces.

7 Access will be off of Auto Park Place
8 which is adjacent to Route 17K.

9 That's basically the overview of the
10 project.

11 CHAIRMAN EWASUTYN: You did a very nice
12 job of presenting it. One more time, what's the
13 purpose of your proposal before us this evening?
14 You have an existing building?

15 MR. JAMES: Correct.

16 CHAIRMAN EWASUTYN: And the use of that
17 building currently is?

18 MR. JAMES: Office space.

19 CHAIRMAN EWASUTYN: Office space.
20 Okay. And you're expanding it now to accommodate
21 for the storage of vehicles?

22 MR. JAMES: That's correct.

23 CHAIRMAN EWASUTYN: And you'll be
24 storing these vehicles on a seasonal basis, on a
25 weekly basis, on a monthly basis?

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

ENTERPRISE

29

MR. JAMES: I'd like to introduce Frank Menia from Enterprise Rental Car.

MR. MENIA: Good evening. The office currently is an administrative office. What we're planning on doing is twice a year we pull our fleet in as seasonal changes in our fleet mix. So we're pulling them in and then we sell them off at the auction. So we actually need extra storage twice a year, in September, October and then again in January, February.

CHAIRMAN EWASUTYN: Will you be consolidating with your current business that you have at the -- I assume you have a lease arrangement with Michael Biggs Junior.

MR. MENIA: No. That's actually a rental office. That's separate from our administrative office. In this building we have our accounting, we have our loss control department, operations, that type of thing.

CHAIRMAN EWASUTYN: So that facility will never be coming over to this location?

MR. MENIA: No. Never. That's a rental office for customers. We don't handle customers in the back, it's just administrative

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

ENTERPRISE

30

use.

CHAIRMAN EWASUTYN: Let's turn it over to questions from Board Members before I turn to our consultants. Frank Galli?

MR. GALLI: John, you just asked the questions I was going to bring up.

CHAIRMAN EWASUTYN: Anything else?

MR. GALLI: No. Not at this time, no.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: With this twice a year storage, from what you described I was under the assumption that for the rest of the year except for those four months that you mentioned there would be no storage on the lot at all.

MR. MENIA: Correct. The rest is more than adequate. It's just the two times a year we just get an inflow of cars that we just need the extra storage for.

MR. BROWNE: Would you be willing to basically sign off on something saying you would limit the storage to those four months that you indicated?

MR. MENIA: I don't know if we could possibly sign off because the season changes. If

1 say there's another 9/11 in the future. When
2 9/11 hit our fleets took a tumble. Everyone was
3 traveling. At that time we would have to pull in
4 cars immediately. That's what we did at that
5 time. So to change that around and to say it's
6 always going to be those four months, it's tough.
7 I know it's going to be twice a year because
8 that's when we recycle our cars. Whether it's
9 going to be those two months forever, it would be
10 very tough to --

12 MR. BROWNE: I'm looking at it from our
13 standpoint. If we don't have something like that
14 in place then eventually we would be giving you
15 permission to be storing things any time forever,
16 period.

17 MR. MENIA: Correct. Correct.

18 MR. BROWNE: I'm trying to understand
19 where we're going with this.

20 MR. MENIA: I understand your point.
21 Hopefully you can see that with business cycles
22 and trends it's just difficult to say exactly
23 when. Hopefully that never is because we're not
24 making money with the cars sitting on our lot.

25 MR. BROWNE: The 120 storage number, is

1 ENTERPRISE 32

2 that because of the limited space or is that some
3 other business number?

4 MR. MENIA: No. We pull in about 100
5 so we were being conservative and saying 120.
6 Bob drew up plans and it happened to be 128 when
7 he drew the lines.

8 CHAIRMAN EWASUTYN: Ken Mennerich?

9 MR. MENNERICH: Will you be bringing in
10 any new cars into the site for distribution to
11 your sales offices?

12 MR. MENIA: No. Not at this time. I
13 don't think in the future. The plan is when we
14 buy our vehicles we buy them through and drop
15 ship them through local dealerships throughout
16 our region. We cover five counties down to
17 Westchester. It just obviously makes sense when
18 we have new cars coming in we drop some in
19 Westchester, say some in Putnam. All around. It
20 makes more sense financially to drop ship them.

21 CHAIRMAN EWASUTYN: Joe Profaci?

22 MR. PROFACI: I have nothing, John.

23 CHAIRMAN EWASUTYN: I'll turn to our
24 consultants for their comments. Jerry Canfield?

25 MR. CANFIELD: In the work session we

1 had discussed some issues with respect to the
2 subdivision creating possible easements needed,
3 cutting off access. I think Bryant Cocks will
4 elaborate on that a little bit. I don't know if
5 we want to go into the zoning issue at this
6 point.
7

8 CHAIRMAN EWASUTYN: Why don't you begin
9 preparing and then Mike can further the
10 conversation.

11 MR. CANFIELD: In the work session we
12 had discussed the applicability of this proposal
13 to our IB zone requirements. As a stand-alone
14 building what this subdivision will create --
15 you're unique in a sense that our zoning code for
16 storage just are not listed which makes you
17 subject to going to the Zoning Board at least for
18 an interpretation. In the work session prior we
19 were unclear as to exactly what the function
20 would be, okay. We possibly thought that perhaps
21 there would be some type of consolidation with
22 the rental on 17K therefore making you a rental
23 agency.

24 MR. MENIA: Right.

25 MR. CANFIELD: With your proposal as

1 you propose it, and I would probably be the one
2 to make that determination, I could not in all
3 honesty say that you fit the description of a
4 retail agency, therefore that would put you in
5 the reign of going to the Zoning Board to make
6 that determination. That's the first and
7 foremost issue.
8

9 The next issue I'd like to pass on to
10 Bryant to talk about, the actual subdivision and
11 what it does create and does not create. I think
12 there's an issue with what actually is this
13 proposal. We believe it's more than just lot
14 line changes. We're looking at it as a
15 subdivision, a four-lot subdivision. Perhaps
16 Bryant can pick up and go from there.

17 CHAIRMAN EWASUTYN: Please, Bryant.

18 MR. COCKS: As Jerry said, we're going
19 to view this as a four-lot subdivision instead of
20 the two-lot subdivision with the lot line change.
21 There's three lots we're going to turn into four.
22 They are each going to be the two lots, the GM
23 service center lot and the Chase Bank lot, they
24 are gaining or losing, then the Dodge showroom is
25 obviously being split with the Enterprise lot.

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

ENTERPRISE

35

You guys are going to have to show the bulk table with all four lots. I think you have to talk to Dina Haines about if it's going to be a different type of fee for a four-lot subdivision.

Our next comment had to do with, as Jerry said, what type of storage this is going to be. There was no striping or anything there. You guys are going to have to show where the cars are going to go, the access lanes and the -- it looks like -- is that going to be flush with the pavement for the Dodge showroom up there? I know it's going to share a common lot line.

MR. JAMES: It's along there. It will be flush with it. Most of that is a gravel surface, part of it is butted up against pavement. Basically I think the pavement line is straight across there. We're going right up along that chain-link fence.

MR. COCKS: Since you guys are only doing this twice a year is it going to be necessary to pave this lot? I mean it's going to be an extra 30,000 square feet of pavement on an already dense lot with a lot of pavement there already.

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

ENTERPRISE

36

MR. MENIA: Our concern is that if one employee falls it's the cost of the lot already. If one person slips on it. That's the problem.

MR. COCKS: Okay.

MR. MENIA: I mean between, you know, the expanse of the asphalt and everything like that, it's a lot of money. We definitely see it as worthwhile.

MR. COCKS: There's a masonry block building. Is that being used right now?

MR. JAMES: Time Warner has equipment in there. They access it.

MR. COCKS: You guys are going to have to show the easement and submit it. I didn't see it on there. Are they going to go through your parking lot?

MR. JAMES: Correct. Which is what they do now.

MR. COCKS: Right now they just cut across?

MR. MENIA: The existing parking lot, there's a driveway right in front of the building that they have access to.

MR. COCKS: You guys are going to have

1
2 to provide that easement to Mike Donnelly along
3 with you're going to need an access easement now
4 since this lot line change is actually going to
5 be before the entrance. You're going to have to
6 cross --

7 MR. JAMES: We're not transferring
8 property, though. It's still owned in one name.
9 We're not transferring lots.

10 MR. COCKS: I'm not sure. Mike.

11 MR. JAMES: They have a lease. They
12 lease the lot.

13 MR. DONNELLY: Right. If we're
14 creating separate parcels, for one user to get to
15 the section of their parcel where the use is
16 located they have to cross another lot which we
17 should have some kind of declaration that ensures
18 that upon sale that that use remains.

19 MR. JAMES: First Realty and Web own
20 everything.

21 MR. DONNELLY: Once we subdivide it
22 they could be sold. We want a declaration that
23 ensures that the new owner has that right, or the
24 old owner as the case may be.

25 MR. BARTON: The Time Warner piece 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

ENTERPRISE

38

part of the Enterprise piece. That's not going to be two separate pieces. Time Warner --

MR. DONNELLY: I'm not sure I heard the issue. I thought the issue was you would have to cross the other piece to get there.

MR. BARTON: I don't think for Time Warner.

MR. DONNELLY: You'll show us the way in which Time Warner will access and then we'll have to --

MR. BROWNE: Did you give your name?

MR. BARTON: I'm sorry. I'm Ron Barton, I'm one of the owners of the property.

MR. COCKS: Mike, The next person would need an access agreement for that lot.

MR. DONNELLY: It may be a subtenancy. I don't know what they call it. Let's look at how they access it first. We're going to get to the point where we need this narrative anyway, so that will describe everything.

MR. COCKS: Okay. You guys indicated that that tree in the parking lot was going to be saved.

MR. JAMES: Yes.

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

ENTERPRISE

39

MR. COCKS: This is going to have to be referred to the Orange County Planning Department because it's within 500 feet of Route 17K.

As Mike stated, we're going to need a new project narrative stating all the uses. That's the four-lot subdivision and all the new acreages.

There's just a couple issues with the long form E.A.F. I'm sure you got my memo.

Just include in the four new acreages.

Just state where you have the information that there's no threat to endangered species. Usually that's just the DEC website. It's section B-F.

There were just some parking calculation issues. It seemed that the old numbers were listed.

That's it.

CHAIRMAN EWASUTYN: Okay. John, I know Pat had the opportunity to review this and make some comments.

MR. SZAROWSKI: Pat identified the fact that it would be less than one acre so that additional stormwater calculations wouldn't be

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

ENTERPRISE

40

required.

 You will need a sediment and erosion control plan to be submitted with this.

 CHAIRMAN EWASUTYN: Mike Donnelly, we started the meeting with the presentation with Jerry Canfield discussing the possibility of an interpretation from the ZBA. Can you continue on with that?

 MR. DONNELLY: Let me try to follow up with Jerry's comments. What we struggled with and what is always a threshold issue for a planning board is whether or not the use that you propose is one that's permitted in the district under the zoning ordinance. You've told us some information that helps us with that but when we were first looking at it we were trying to understand what this is. Multiple uses are allowed in the IB Zone. Offices are allowed and car rental agencies are allowed. If you are a car rental agency then it would be customarily incidental to that use that you have a vehicle storage area. You've told us you're not a car rental agency and that you are and your building permits have been for an office use. Well, I

1 don't think, unless the Zoning Board can tell us
2 this, that a stockpiled vehicle storage area is a
3 customarily incidental use to an office use, and
4 that makes it its own primary use, and that is
5 not a permitted use in this zone. While it's
6 conceivable that it's a very appropriate and
7 satisfactory use on this lot in that
8 configuration in that area, if the Planning Board
9 were to say that the stockpiling of vehicles for
10 storage is allowed as a primary use everywhere in
11 the IB zoning district, we would be allowing
12 anybody to create vehicle storage areas in the IB
13 district where that is not at all a permitted
14 use.
15

16 What I think we need to do is to ask
17 you to give us a careful narrative, much like you
18 have done orally this evening, that says what
19 activities will be carried out, where the vehicle
20 storage is, your best estimate as to how often
21 you will use it with the caveats you very frankly
22 gave us this evening, tell us a little bit more
23 about the Time Warner use. When we have that and
24 take stock, it may be that it needs to be
25 referred to the Zoning Board of Appeals for

1
2 either the consideration of a variance, possibly
3 a use variance, or maybe an interpretation that
4 under the circumstances that you present in some
5 fashion this type of vehicle storage could be
6 accessory to the office use.

7 I will tell you that the Zoning Board
8 has in certain situations allowed an accessory
9 use to be on a lot that is different than the lot
10 where the primary use is conducted. They've done
11 that in those limited circumstances only when
12 it's an immediately adjoining or contiguous lot
13 where both lots are operating as a cohesive unit,
14 we just have a lot line that nobody sees. You do
15 have a rental agency, as I understand it, removed
16 by a lot or so but you've told us there isn't any
17 real relationship there.

18 Nobody is saying we're opposed to the
19 project but we need to get a handle on whether
20 it's allowed in the zone and whether there may be
21 some role for the Zoning Board to play. So what
22 we discussed at work session and what we'd like
23 you to do is put together that narrative,
24 describe in words what it is. I will tell you if
25 there's ultimately an approval that narrative

1 will become part of the resolution of approval
2 and will constitute the outer limits of what you
3 can do without an amended approval. So certainly
4 tell us what you want and what you think is
5 likely to be what you will need at least in the
6 foreseeable future in order that we can take
7 stock of what it is. There is a real issue here
8 as to whether the use is allowed.
9

10 MR. MENIA: If I'm understanding you
11 correctly, if we really rent one car to one
12 customer outside of our administrative office
13 it's an allowable use.

14 MR. DONNELLY: I haven't looked at the
15 definition of what a car rental agency is and the
16 extent that you carry on that activity. Give us
17 the narrative and we'll take it from there.

18 MR. MENIA: So then there might be a
19 change in that narrative.

20 MR. DONNELLY: You can change it based
21 upon the information we've given you --

22 MR. MENIA: Absolutely.

23 MR. DONNELLY: -- to see if you can
24 craft something that fits what's permitted in the
25 zoning district.

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

ENTERPRISE

44

MR. MENIA: Absolutely.

MR. DONNELLY: When you do the Board will consider it.

MR. MENIA: Thank you, sir. It sounds like, if I'm understanding it correctly, if we have an opportunity to help any customers, because customers do come back to our lot, believe it or not, all the time, that would become a car rental use as opposed to simply an administrative use. In many of our regional offices throughout the country it's a shared facility where we share -- you know, handling customers right there, whether they come in for a car rental or for let's say our insurance department, our loss control department, if they got into an accident and they want to speak to someone. That's really a car rental use. That sounds like, according to Michael, that that would be okay at that point.

MR. DONNELLY: Maybe. I think what the Board would need to look at and recognize is the accessory use, which would be the vehicle storage has to be accessory to the primary use. So your narrative should give us some idea, either by

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

ENTERPRISE

45

square footage or employees, --

MR. MENIA: Very good.

MR. DONNELLY: -- what is being dedicated to the primary use and what is the accessory use. The tail can't wag the dog. The primary use would have to be the car rental agency that could then authorize the vehicle storage.

MR. MENIA: Absolutely.

MR. DONNELLY: -- you couldn't have a vehicle storage area that was 98 percent of the utilization being accessory to a 2 percent primary use. So as I said, I don't know where that crosses over but your narrative would be the place where you explain that to us.

MR. MENIA: Very good.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: You mentioned the Time Warner building. Are they still using that for their satellite equipment?

MR. BARTON: Yes. Time Warner rented this. They leased this building for ten years prior to Enterprise. When they did that they put

1 fiber optics around Orange County. That's what
2 they call a head-in building, and that actually
3 towers most of the cable and Road Runner in this
4 end of the county. That's still their building.
5 They lease that from us and they will continue
6 to. They have a huge investment in equipment I
7 guess in there. Their access is only a
8 technician periodically needs to come in to
9 monitor the equipment. It's not an occupied
10 building.
11

12 CHAIRMAN EWASUTYN: Cliff Browne?

13 MR. BROWNE: I think we pretty much
14 covered it.

15 CHAIRMAN EWASUTYN: Ken Mennerich?

16 MR. MENNERICH: Nothing further.

17 CHAIRMAN EWASUTYN: Joe Profaci?

18 MR. PROFACI: No additional.

19 CHAIRMAN EWASUTYN: Frank, how many
20 people could you employ as full-time staff in
21 this building right now?

22 MR. MENIA: In that building, I would
23 say full time thirty maybe.

24 CHAIRMAN EWASUTYN: And the fact that
25 your current parking area seems to be housed in

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

ENTERPRISE

47

all parking stalls, how is it that you have so much parking on the site now?

MR. MENIA: I'm not sure of your question, John.

CHAIRMAN EWASUTYN: My question is driving by the site it looks like all the parking stalls that you have available are completely full.

MR. MENIA: Okay.

CHAIRMAN EWASUTYN: Are you storing cars there now?

MR. MENIA: Yes, we are. The other thing is too we do have training classes that occur from time to time. So depending on what day you drive by --

CHAIRMAN EWASUTYN: Okay. Good. Thank you.

I guess we can't act on it until we receive a letter from you, then we'll decide whether we'll discuss it under Board business or make it an item --

MR. GALLI: One question. If it changes over to a four-lot subdivision, then there's more fees involved that they have 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

ENTERPRISE

48

CHAIRMAN EWASUTYN: You'll have to speak to Dina as far as the difference between the two-lot subdivision and the four-lot subdivision.

MR. DONNELLY: The courts have declared under our zoning ordinance and subdivision regulations that any lot line change is itself a subdivision and therefore as many lot lines or lots that are reconfigured as a result of this, that's the number of lots this is from the point of view of subdivision. It's not how many lots it ends up with versus how many it starts with. It was not normally the Board's position but the courts have told us that's the case. It wasn't in the context of fees. The change in fees flows from that court determination.

MR. BARTON: And that's recent?

MR. DONNELLY: Within the last six months, year. Six months. January I think.

MR. BARTON: That was certainly a change in my understanding of it.

MR. DONNELLY: Yes. It was a surprise to us, too.

MR. MENIA: John, I have one question.

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

ENTERPRISE

49

As far as the Orange County, was it Planning,
will they be contacting us?

CHAIRMAN EWASUTYN: No. At the time
that the Board acts to approve the concept plan,
then we'll refer it on to the Orange County
Planning Department at which point you'll get
plans to Bryant Cocks and we'll send it on to
them. They have thirty days to respond. That's
236-M --

MR. DONNELLY: 239-M.

CHAIRMAN EWASUTYN: -- 239-M of the
Municipal Law.

MR. MENIA: So that would mean that at
best case scenario there would be one more
meeting here and another month goes by and
another meeting at Orange County?

CHAIRMAN EWASUTYN: That would be
reasonable. Okay.

MR. JAMES: Thank you.

MR. MENIA: Thank you.

(Time noted: 7:44 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: September 4, 2008

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

LANDS OF JAN KADNAR
(2008-16)

275 Pressler Road
Section 6; Block 1; Lot 10
AR Zone

- - - - - X

CONCEPTUAL SKETCH PLAN

Date: August 21, 2008
Time: 7:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: JAMES RAAB

- - - - - X

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

MS. HAINES: The next item of business we have tonight is the lands of Jan Kadnar. It's a conceptual sketch plan located at 275 Pressler Road, it is in an AR Zone and it's being represented by Jim Raab.

MR. RAAB: Good evening. This is a subdivision on an old villa property located on Pressler Road just north of the subdivision that Dave Callas did -- Stantech is doing for Dave Callas, and also the one just south of Michael Bryant's subdivision which was just approved earlier -- late last year.

What the Kadnars would like to do is to subdivide off three building lots and isolate the cottage and the existing structure, the cottage on an acre and the existing structure on the residual acreage for the time being. Knowing that normally this is something that the Planning Board would want to know what you were doing with the rest of it, they really have no plans for it right now.

Initially when I first did a sketch for Mr. Kadnar it was the one I sent to you with the subdivision application package. I know it's got

1 it's steep slopes. It's got just about
2 everything you don't want to see in a
3 subdivision. Again, I believe -- both I and
4 Darren Stridiron believe this is the best way to
5 get down to the bottom of the property. That may
6 all change.
7

8 There have been discussions between Mr.
9 Kadnar and Mr. Callas about maybe combining an
10 access to the bottom portion of it which would
11 alleviate all this here which is probably the
12 best idea. That's all it's been is it's been a
13 discussion.

14 Pretty much it is that we lay out an
15 additional eight lots to bring the total to
16 twelve and leave this whole area back here on one
17 parcel.

18 Again, this is nothing more than a
19 sketch I did for Mr. Kadnar to some way show how
20 the bottom section can be subdivided. Believe it
21 or not, it's a very, very pretty section. It's
22 only steep in the initial slope. It's either
23 this or below right through the hill which we
24 thought was ridiculous, at least Darren and I.
25 Not Darren Doce but Darren Stridiron. That's it.

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

Yes, it does have its steep slope.
That will probably be something we have to do
step by step with a lot of erosion and sediment
control things in place. That's not what we're
here for tonight. That is what may happen or may
not happen in the distant future.

CHAIRMAN EWASUTYN: Jim, maybe we ought
to discuss that now so we understand what may or
may not happen based upon the fact that the
Planning Board looked at it.

Mike, let's go on record with that now.

MR. DONNELLY: I think the Board
appreciates that you showed a possible future
development plan, and that's a good idea, however
it raises, since you've shown it, some issues as
you said about the difficulty with that access.
I think the Board does not want to see you
further design that future development plan at
this early juncture, but it does not at the same
time want someone in the future to claim that
because it was shown to the Board now that it was
contemplated then.

MR. RAAB: Absolutely.

MR. DONNELLY: I think what we would

1 likely consider is putting language in the
2 resolution in which we acknowledge that you
3 showed it to us but that we did not approve it
4 and the Board had serious reservations about the
5 feasibility.
6

7 MR. RAAB: Which is exactly what I
8 thought would be the case because I have the same
9 situation down in Cornwall.

10 MR. DONNELLY: On a related issue, the
11 E.A.F. reveals possible Box Turtle habitat.
12 Because you're not developing that area I don't
13 think the Board is inclined to require you to do
14 the further environmental review that is
15 necessary, but any resolution now I think
16 appropriately should note that additional
17 environmental studies might be needed in the
18 future in regard to that issue at that point.
19 My recommendation to the Board is I think that
20 best balances the unfairness of requiring you to
21 do an environmental study and do engineering for
22 something that may never happen and we know has
23 difficulties that can better be handled when it's
24 close at hand. It's not quite segmentation but I
25 think it's a fair approach to announce to the

public and to you what we will require later on.

MR. RAAB: I really appreciate that.
Thank you very much to the Board.

CHAIRMAN EWASUTYN: Is there agreement
from Board Members that the Planning Board is not
in favor of the possible future subdivision
sketch presented this evening?

MR. DONNELLY: It's less important that
you say whether you're in favor of it. You
certainly aren't approving it and on its face it
presents feasibility difficulties.

CHAIRMAN EWASUTYN: Is the Board in
agreement with that?

MR. GALLI: Yes.

MR. BROWNE: Yes.

MR. MENNERICH: Yes.

MR. PROFACI: Yes.

CHAIRMAN EWASUTYN: Thank you.

MR. RAAB: Should I continue on?

CHAIRMAN EWASUTYN: Since you started
with that I just wanted to conclude because we
had discussed that. Since you made it your entry
point I didn't want to leave it hanging out
there. That's all.

1 MR. RAAB: Again, the three new lots
2
3 would be served by well and septic.

4 We've got comments from your
5 consultants and we have no issues with any of
6 them. We've taken care of most of them already.

7 That's pretty much it. We understand
8 we do have to go to the ZBA. I believe it's for
9 three issues, front yard setbacks for the two
10 existing buildings and the square footage --
11 livable square footage on the cottage.

12 CHAIRMAN EWASUTYN: Thank you.

13 Comments from our consultants. John?

14 MR. SZAROWSKI: Pat had a number of
15 comments. He did discuss the variances that you
16 need.

17 The water supply for the existing
18 structures on lot 4 should be shown.

19 Sewer disposal. The existing septic
20 systems for lots 4 and 5 also need to be shown.

21 You also need to show the hundred foot
22 buffer for the well on lot 3.

23 MR. RAAB: Right.

24 MR. SZAROWSKI: The house on lot 3 is
25 in a very steep area. You've got almost a

sixteen-foot difference between the one side of the house to the other.

MR. RAAB: We're going to do the sections as Pat recommended.

MR. SZAROWSKI: The sections were for the subsurface system for that same lot. The raised bed system has some grading issues. It looks like you might be conflicting with the existing stonewall.

Again back to the house. The fourteen to sixteen-foot across the house might not be feasible.

MR. RAAB: Okay.

MR. SZAROWSKI: It's in a steep area. You might want to reconfigure how the house is located.

The driveway access to the existing structure on lot 5 should be depicted.

We need an access and a maintenance agreement for the driveway for lot 3. That needs to be provided.

There should be some discussion about the planning for the removal of the structures.

MR. RAAB: We want to just -- we're

1 agreeable to just about anything because the
2 structures that are going to be demolished will
3 be demolished almost immediately. If you want to
4 put a time limitation on it, that's fine.
5

6 MR. DONNELLY: Probably before the plat
7 is signed.

8 MR. RAAB: Yeah. That's good. Do you
9 have a problem with that, Jan?

10 MR. KADNAR: No.

11 CHAIRMAN EWASUTYN: Bryant Cocks?

12 MR. COCKS: As you mentioned, they'll
13 need those three variances.

14 We discussed the removal of the
15 structures on site. We were wondering about the
16 cottage lot.

17 MR. RAAB: The cottage is staying
18 because it's basically -- it's a caretaker's
19 quarters. There's somebody it's rented to.
20 Whether it's going to be enlarged or not we have
21 -- there's no plan on the board right now, that's
22 why it will go for the variance. It will
23 probably be enlarged because it's such a small
24 structure. You know, there's no plan for that
25 right now.

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

LANDS OF JAN KADNAR

60

MR. COCKS: Okay. As John mentioned, the driveway access on lot 4 for the cottage has to be shown.

Then also for the villa lot, I don't think a driveway was shown coming off. I don't know if there is a driveway. It might just be the --

MR. RAAB: They're going to share the -- lot 5 and lot 3 are going to share the driveway coming in. We didn't really know where we were going to put the driveway for lot 4 when we submitted the plan, that's why it wasn't shown. Now we realize the best place to put it, because I've been out there with Todd, Todd DePuy, and we think maybe it would probably be best to come in right across from the existing road across the street. So that's probably where we're going to put it. That's up to -- the highway department needs to approve all the access points.

MR. COCKS: That was my next comment.

The common driveway access for lots 1 and 2, too. I mean it's split down the lot line so you're not going to need an access and

maintenance agreement.

MR. RAAB: We'll combine them like the Planning Board likes to see this on the inside right-of-way.

MR. COCKS: Just the one land delineation. I'm sure you have it there.

The surveyor's seal and signature.

The location map was kind of faded. If you could provide just a better one of that.

The stonewalls aren't going to be affected with this in the future. I just wanted to bring it up there could be an impact later on.

Mike mentioned the Box Turtles.

In the E.A.F. just state the ZBA approval will be needed and highway department approval will be needed.

That's it.

MR. RAAB: I'll get you a revised copy of that.

CHAIRMAN EWASUTYN: Do me a favor, Jim. When you send a copy to Bryant remember the Planning Board.

MR. RAAB: Yes. Always.

CHAIRMAN EWASUTYN: Because you

1 mentioned earlier today that you had sent them a
2 revised copy and I said please don't be accepting
3 revised copies without the Planning Board getting
4 a copy.
5

6 MR. RAAB: Okay. You mean of the
7 E.A.F.?

8 CHAIRMAN EWASUTYN: Right.

9 MR. RAAB: Well we just thought he lost
10 his. That's the reason why we sent it. We
11 didn't send a revised copy. They were supposedly
12 all sent out with the packages, John. That's the
13 only reason why we sent it.

14 CHAIRMAN EWASUTYN: Thanks.

15 Comments from Board Members?

16 MR. GALLI: No additional.

17 MR. BROWNE: I just have a concern on
18 the drainage in the front towards Pressler.
19 Living on Pressler I know the drainage on
20 Pressler is almost nonexistent. Take a real
21 close look at where that water is going.

22 MR. RAAB: We'll do that.

23 MR. BROWNE: I know percentage wise
24 most of it is going from the back. There are
25 some grades there coming down towards Pressler.

There's nothing there to take it.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

MR. PROFACI: Nothing further.

CHAIRMAN EWASUTYN: I'll move for a motion to refer this to the Zoning Board of Appeals for three variances, the first one being a front yard variance for lot 5. 50 feet is required and there's an existing 10 foot front yard setback. For lot 4 the required front yard setback is 50 feet and the existing setback is 21.7. For the cottage on lot 4, the current existing available floor area is 624 square feet and 900 is required.

I'll move for a motion to refer it to the ZBA.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. I have a second by Frank Galli -- excuse me, Joe Profaci. So far this evening it's been those two back and forth. Any discussion of the motion?

(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

LANDS OF JAN KADNAR

64

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

Thank you.

(Time noted: 7:57 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: September 4, 2008

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

TURNER SUBDIVISION
(2008-14)

Fox Hill Road
Section 3; Block 1; Lot 3.22
R-1 Zone

- - - - - X

SITE PLAN, TWO-LOT SUBDIVISION
& MULTI-FAMILY ARB

Date: August 21, 2008
Time: 7:58 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: JAMES RAAB

- - - - - X

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

MS. HAINES: The last item of business we have tonight is the Turner subdivision. It is a site plan and a two-lot subdivision. It's located on Fox Hill Road in an R-1 Zone and being represented by Jim Raab.

MR. RAAB: Thank you very much. We had a number of things we had to take care of from the last meeting. It involved the sight distances for the driveways.

There had been some discussion about the stonewall that exists back here. I had said at the previous meeting that I didn't believe there was a problem with trying to preserve the stonewall. Mr. Turner -- Mr. Turner looks at it this way, the stones aren't going to leave the property but he doesn't plan on putting up any other stonewalls on the property. He probably will use them, like Bryant has suggested, for retaining walls and that type of thing but he didn't plan on recreating the stonewall. I'll propose that to the Board only to the fact that no one is going to see this except for Mr. Turner. There's almost two hundred foot of woods between him and Mr. VanDemark's house on the top

1 of the hill, and there's about another hundred
2 and fifty foot of woods between the next building
3 down on the other side -- on the south side. If
4 it's not a problem to the Board we would probably
5 just -- they're going to have to be disturbed for
6 the septic system and the house and then we'll
7 leave the rest of the stonewall alone. That was
8 pretty much it.

10 We did the grading for the driveway as
11 Pat had suggested. That's really the sum and
12 substance of it.

13 Mr. Vandemark finally returned from
14 wherever he was. We've been trying to get in
15 contact with him for probably over a month.

16 The septic and well are more than a
17 hundred and fifty to two hundred feet away from
18 the property line. We will so note that on the
19 future plans.

20 CHAIRMAN EWASUTYN: Okay. Bryant
21 Cocks?

22 MR. COCKS: John, the E.A.F. is for
23 this project, not for the last one. We did the
24 E.A.F. for the first project.

25 Jim mentioned the stonewalls. That was

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

one issue.

The well and septic information, that was another one.

The approval from the highway department.

Then ARB as this is a two-family house, that will be needed for the site plan.

MR. RAAB: It will be prepared.

MR. COCKS: Those are our only comments.

CHAIRMAN EWASUTYN: John, I guess the only outstanding issue we have now is whether or not the grades can be met.

MR. SZAROWSKI: Pat was looking for there to be a negative two percent pitch down from the road before you begin going up the hill. Looking at the plan, the grades do seem to extend right to the proposed property lines. It's going to get tight. You might have to look at possibly using the stone for the retaining wall to make it. You need to show that on the next --

MR. RAAB: When we go out there for the highway department for the driveway should we have Pat with us?

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

TURNER SUBDIVISION

CHAIRMAN EWASUTYN: I would say that
would be a recommendation.

MR. RAAB: Thank you. That's what
we'll do. Kill two birds with one stone.

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

MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: I guess we had two
outstanding issues on this. One was the well and
septic location. Jim has said that with the
Vandemark property that there's a minimum of a
hundred and fifty feet to two hundred feet from
the existing or proposed well and septic for this
property. Now that there will be a field
inspection between Daryl Benedict and Pat Hines
as far as the proposed driveway, where and how it
accesses Fox Hill Road. The two percent negative
grade, that issue will be addressed.

At this point then I'll move for a
motion to declare a negative declaration for the
two-lot subdivision and multi-family for the
Turner subdivision and set -- what's the date,
Dina?

MS. HAINES: September 18th.

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

TURNER SUBDIVISION

71

CHAIRMAN EWASUTYN: And set
September 18th for a public hearing.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Ken seconded that.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried. Thank you.

(Time noted: 8:02 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: September 4, 2008

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

- - - - - X
In the Matter of

LANDS OF LEON A. ORZECOWSKI
(2005-59)

Request for a Six-Month Extension of
Preliminary Approval

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:02 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - X

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

MS. HAINES: Board business. The first thing is the lands of Leon Orzechowski.

We received a letter from Gerald Zimmerman dated August 8th. They are requesting a six-month extension of the preliminary approval. Their current approval expires September 17, '08. With an extension the approval will be valid through March 16, '09.

CHAIRMAN EWASUTYN: I'll move for that motion to grant the extension.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

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

(Time noted: 8:03 p.m.)

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

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

DATED: September 4, 2008

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

- - - - - X
In the Matter of

SUMMER KIM
(2006-39)

Request for a 180-Day Extension of
Preliminary Approval

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:04 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - 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

SUMMER KIM

77

MS. HAINES: The next one is Summer Kim. We received a letter from Tom DePuy on August 18, 2008. They're also requesting a 180-day extension of preliminary approval. With the extension the approval will be valid until January 19, 2009.

MR. DONNELLY: Can I just question one thing? You had -- it's not crucial I guess. You had referenced 03-40 as the file. I think that's an older one. I think this is 06-39, the Longview Farm part of Summer Kim because the dates line up.

MS. HAINES: It might be, yeah. Their letter says Longview Farm. You're right.

MR. DONNELLY: I think it should be the Longview Farm 06-39 and then the dates are all accurate.

MS. HAINES: 06-39?

MR. DONNELLY: Yes.

MS. HAINES: Thank you. I apologize.

CHAIRMAN EWASUTYN: Making that correction to Longview Farms -- 06-39 is it?

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: I'll move for that

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

SUMMER KIM

78

motion to grant the 180-day extension.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself.

(Time noted: 8:06 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: September 4, 2008

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

NORTHEAST REALTY HOLDING, L.L.C.
(2006-15)

Request for a One-Year Extension of
Final Site Plan Approval

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:06 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - X

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

1 NORTHEAST REALTY HOLDING, L.L.C. 81

2 MS. HAINES: Our third extension
3 tonight is for Northeast Realty Holding. That's
4 the hotel and commercial building on Corporate
5 Boulevard. We received a letter from Michael
6 Cleary dated August 14, 2008. He's requesting a
7 one-year extension of the final site plan
8 approval. The current approval expires October
9 19, 2008. With the extension approval will be
10 valid through October 19, 2009.

11 CHAIRMAN EWASUTYN: Okay. I'll move
12 for that motion to grant the extension to
13 Northeast Realty Holding.

14 MR. GALLI: So moved.

15 MR. MENNERICH: Second.

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

19 (No response.)

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

22 MR. GALLI: Aye.

23 MR. BROWNE: Aye.

24 MR. MENNERICH: Aye.

25 MR. PROFACI: 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

NORTHEAST REALTY HOLDING, L.L.C.

82

CHAIRMAN EWASUTYN: Myself yes. So
carried.

(Time noted: 8:08 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: September 4, 2008

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

LANDS OF JOHN TERRIZZI

Request to Surrender Final Approval

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:08 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - X

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

1
2 CHAIRMAN EWASUTYN: Dina, do you
3 want to take the time, we just got it at the
4 end of the day today, to discuss the letter
5 from John Terrizzi. If you could read that,
6 please.

7 MS. HAINES: Sure. As John mentioned,
8 we received a letter from John Terrizzi dated
9 August 14, 2008. It says, "Dear Mr. Ewasutyn, as
10 per our telephone conversation of August 7, 2008
11 we would like to rescind our final approval for
12 this subdivision and remain on preliminary
13 approval status. This request is not because of
14 incomplete work on this project but due to
15 serious health issues of a parent. Thank you for
16 your consideration in this matter. Sincerely,
17 John Terrizzi."

18 CHAIRMAN EWASUTYN: Mike, before I move
19 for a motion from the Board would you please
20 explain for the record how this is possible.

21 MR. DONNELLY: As you're aware, the
22 rules of how long approvals are effective or
23 viable vary depending upon whether it's a site
24 plan, a subdivision and whether it's preliminary
25 and whether it's final. Coming up on the agenda

I'm going to talk about that a little bit. Sufficed to say that when conditional final subdivision approval is granted the applicant only has 180 days to satisfy the conditions of the resolution, get a certification to that effect and file his plat. The law permits you to give additional extensions. It actually says ninety-day extensions. The effect is a hundred and eighty days or a total of three hundred and sixty days, but under no circumstances may you grant more than that.

You've taken the position in the past that when an applicant who has conditional final approval presents to you a good and valid reason why he can not satisfy those conditions, you have allowed certain applicants in that situation to surrender their final approval and return to the preliminary approval status. The number of times and the total length that you can extend a preliminary subdivision approval is not limited by either State law or your own ordinance. That doesn't mean it has to be approved forever and if there are changes in the area or no good reason asserted, you could deny one but you don't face

1 that three hundred and sixty day deadline.
2
3 Generally it's when an applicant is unable to get
4 his other agency approvals.

5 If you find Mr. Terrizzi's request due
6 to family health issues to be a valid reason to
7 allow him to return to preliminary status, he has
8 said in writing he's willing to surrender his
9 final approval and I believe you could reinstate
10 him to the preliminary stage.

11 CHAIRMAN EWASUTYN: Discussion from
12 Board Members. Frank Galli?

13 MR. GALLI: Does he realize that he
14 could possibly have to come back if things
15 change?

16 MR. DONNELLY: He'll definitely have to
17 come back and get final again. If the ordinance
18 were to change he would have no protection unless
19 his plat is filed.

20 MR. GALLI: Okay. Do you think he's
21 aware of that?

22 CHAIRMAN EWASUTYN: He is.

23 MR. GALLI: Okay.

24 CHAIRMAN EWASUTYN: At one time he was
25 waiting for the letter that we had from John

Nosek who represents him and talked about waiting to get a sign off from the DOT highway work permit. He has subsequently received that but now because of an illness in the family he still wants to waive that opportunity to move forward and get the plans signed and just rescind.

Cliff?

MR. BROWNE: I'm okay with it.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: Okay.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: It's fine.

CHAIRMAN EWASUTYN: Okay. We'll be notifying everyone tomorrow about their extensions.

In this case I'll move for a motion to grant Mr. Terrizzi his request to rescind his final approval for his subdivision and to grant him a preliminary approval status.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

LANDS OF TERRIZZI

88

(No response.)

CHAIRMAN EWASUTYN: There being no
discussion, I'll move for a roll call vote
starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

CHAIRMAN EWASUTYN: And myself yes. So
carried.

(Time noted: 8:14 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: September 4, 2008

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

DISCUSSION BY MICHAEL DONNELLY, ESQ.

Update on Approval Time Limits and Extensions

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:14 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - 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

BOARD BUSINESS

91

MS. HAINES: The next thing on Board business is Mike Donnelly, as he stated before, updating us on approval of time limits and extensions and, you know, what happens when certain people's extensions run out and now they want an extension or when preliminary approvals stay open for a very long time.

CHAIRMAN EWASUTYN: I think equally important is Mike has prepared, and you have a copy of it, what we'll call a generic boilerplate letter that if the Board agrees we would on occasion send out. Part of our responsibility with the Planning Board is to sort of what we'll call track projects in order to then think about what the scheduling may be like. It was sort of an easy thing to do during the height of the market when people were all kinds of moving forward and wanting to get on the agenda. It took Dina and I and the office and everyone here a lot of hard work and a remembrance of what was going on. There seems to be a quiet in the storm right now as we can see by these extensions and also some projects. One in particular, no need to mention, had received their Orange County

Health Department approval going back almost a year ago. In tracking that in the office we were wondering, you know, what's going on now.

So with that I asked Mike to just review all of it and then consider maybe from time to time sending letters out to people just to know what the status is.

Mike, please.

MR. DONNELLY: First the letter we just talked about, conditional final. As you can see, that duration of the approval is self-effectuating. At the end of a hundred and eighty days it's dead unless extended. Final site plans, though it is not State law that regulates, it's your own ordinance, you have a Section 185-58 E that says a final site plan approval is good for a two-year period and may be extended for an additional period of one year. Again, it's self-effectuating. At the end of two years it expires unless extended, and the extension can only be for one additional year.

Preliminaries are different. Again, there's a difference between site plan and subdivision. As an outline in the letter for

1 preliminary site plans, this is at the top of
2 page 2, your ordinance says by weighing 185-58 C
3 against 185-58 D, that the duration of a site
4 plan approval is six months or such longer period
5 as is required to complete any required
6 environmental or other regulatory review. The
7 way that's written is not self-effectuating and
8 it's really just illustrative of how long it
9 should be good for.
10

11 The first issue for which this letter
12 can be used is that if we have a number of these
13 preliminary site plan approvals that have been
14 given and you don't want to leave them out there
15 forever because suddenly somebody rushes in and
16 wants final, if enough years go by and nobody
17 even remembers the application it's as good as
18 starting over, and if that's true why don't you
19 make them start over, fish or cut bait. So the
20 letter, by removing or adding to the bracketed
21 language, could be written to an applicant who
22 had received preliminary site plan approval but
23 had not returned to the Board. We can insert a
24 date in the blank line and then the applicant
25 would need to return to you.

1 The next category would be people who
2 had received preliminary subdivision approval.
3 There the State Law -- Town Law section 276-H
4 says that a planning board may revoke a
5 preliminary subdivision approval if the applicant
6 does not submit a final subdivision application
7 within six months. Again it's discretionary. It
8 authorizes you to revoke. It is not self-
9 effectuating. This letter could be used to
10 require those applicants to either return to push
11 forward with their application or notify them
12 that if they do come back that the application
13 will be deemed withdrawn and therefore no longer
14 of any effect.

16 There is another category that sits out
17 there and that is people that have applied to
18 you, shown up at one or two meetings, maybe more,
19 and then disappear for lengthy periods of time.
20 I think there's some disadvantages to you if you
21 leave those out there for too long, again because
22 they come in, and we have seen some of these
23 projects that have a way of coming back after a
24 duration of years, and they really are as if they
25 start over and yet they have a trail of stuff

1 that everybody has to unravel and figure out and
2 get familiar with. By adapting this letter
3 slightly, I think if you felt it important to
4 your policies to tell people that haven't come
5 back in a period of time that unless they resume
6 prosecuting their application it will be deemed
7 withdrawn, the letter could be used for that
8 purpose.
9

10 Dina has been doing a bang up job of
11 keeping track of all the pending applications.
12 Either on a case-by-case basis or maybe on a
13 policy basis that any applicant that has not
14 appeared before the Board during the last X
15 number of months, years, whatever it may be,
16 should be put on a list and a draft letter
17 prepared for your review to see if you'd like to
18 send it out. Try to keep those things on a short
19 leash.

20 The bottom line is finals are not a
21 problem because they're self-effectuating.
22 Preliminaries you have the authority I think to
23 pull them in or require them to move forward, and
24 you also could write a similar letter for people
25 that had just stopped showing up. I think most

boards feel that those are administrative problems, particularly if years go by, memberships change, consultants change, sometimes files are misplaced. Applicants think because they got a negative declaration in 1956 they should be entitled to that again today and it leads to confusion. So I think it's a good idea to take stock.

If you want to use this letter, I did it quickly, I can work with Dina to make it better. Maybe have three versions rather than brackets in here. I think Dina can run with it the way it is.

CHAIRMAN EWASUTYN: Frank?

MR. GALLI: Sure.

CHAIRMAN EWASUTYN: Cliff?

MR. BROWNE: Good idea.

MR. MENNERICH: I also think it's a good idea.

CHAIRMAN EWASUTYN: Joe?

MR. PROFACI: Yes.

CHAIRMAN EWASUTYN: There's another reason, Mike. For ones that don't return, the Town accounting office periodically goes through

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

BOARD BUSINESS 97

State auditing and then we're required to respond as far as escrow money, what is the activity. I think this is a good way to cross reference that control.

MR. DONNELLY: Okay.

MR. MENNERICH: Just under the preliminary site plan approval, we can grant extensions for environmental or other regulatory review. Even there I think there's abuses of that. We don't know if the applicant is actively pursuing getting these issues resolved or not. We take their word for it.

MR. DONNELLY: One of my municipalities is actually amending their language that reads very much like that to include an after phrase that says or other good cause shown. Mr. Terrizzi might be another good cause shown. That municipality actually feels that the downturn in the real estate market is another good cause shown because what they don't want to have is an onslaught of repeat applications that they have already acted on in the relatively recent past when we start to come out of the tunnel because of the volume of all of that at once. I suppose

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

BOARD BUSINESS 98

you can read the language broadly and their inability to obtain their other regulatory approvals comes in part from their own foot dragging. If you wanted to be more I guess straightforward about it you could suggest to the Town Board that they amend the language, but I don't think you would be doing too much of an injustice by granting them -- by taking the broadest possible approach. I point out one of my municipalities that wants to be accurate is actually suggesting to the town board that they amend the language to include that phrase.

CHAIRMAN EWASUTYN: I think it would be appropriate. That's really what was my initial focus on this, memorizing these things over the course of many, many years and now they're not there and what happens.

MR. DONNELLY: Recognize that you don't have to extend. If an applicant came in asking for an extension and there had been dramatic changes in the area, whether it was roadway improvements or, I don't know, a taking by a State agency or some other dramatic event, it really calls into question whether that approval

1 should remain viable, then you would not have to
2 extend. So that I think since you're not bound
3 to do so you should ask for a reason. I think
4 you can read the language broadly but you don't
5 have to extend if you're not satisfied with the
6 reason or there have been changes in the
7 immediate area or the regulatory environment.

8
9 Some municipalities were extending a
10 lot of preliminary approvals at times when the
11 DEC regulations were changing, the health
12 department rules regarding separations, at least
13 of in-street sewer lines and water lines, changed
14 and then they faced this problem where the
15 applicants, after getting all these extensions,
16 came back for final when they found all kinds of
17 noncompliance issues with regulations and they
18 had to start over anyway and redo it. So if
19 there are dramatic changes in the regulatory
20 environment that would affect the approval,
21 that's a ground not to extend it because it's an
22 exercise in futility.

23 CHAIRMAN EWASUTYN: Dina, you can work
24 with Mike as far as the format that you would
25 find more effective as far as the three different

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

BOARD BUSINESS

formats for sending out a letter.

MS. HAINES: Mm'hm'.

(Time noted: 8:24 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: September 4, 2008

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

QUARTERLY SITE INSPECTION

- - - - - X

BOARD BUSINESS

Date: August 21, 2008
Time: 8:24 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

ALSO PRESENT: DINA HAINES
MICHAEL H. DONNELLY, ESQ.
BRYANT COCKS
JOHN SZAROWSKI
GERALD CANFIELD

- - - - - X

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

1

2

CHAIRMAN EWASUTYN: The last most

3

important item under Board business.

4

MS. HAINES: Quarterly site inspection.

5

October.

6

CHAIRMAN EWASUTYN: All right. We'll

7

work on that later in September.

8

Any questions from the Board Members?

9

(No response.)

10

CHAIRMAN EWASUTYN: Have a happy Labor

11

Day weekend.

12

I'll move for a motion to close the

13

Planning Board meeting of the 21st of August.

14

MR. PROFACI: So moved.

15

CHAIRMAN EWASUTYN: Joe Profaci.

16

MR. GALLI: Second.

17

CHAIRMAN EWASUTYN: Second by Frank

18

Galli. Roll call vote.

19

MR. GALLI: Aye.

20

MR. BROWNE: Aye.

21

MR. MENNERICH: Aye.

22

MR. PROFACI: Aye.

23

CHAIRMAN EWASUTYN: And myself. So

24

carried.

25

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

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

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

DATED: September 4, 2008