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

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In the Matter of

LANDS OF REED & GRECO  
(2009-04)

398 & 404 Candlestick Hill Road  
Section 6; Block 1; Lot 55.1  
AR Zone

----- X

CONCEPTUAL SKETCH PLAN  
TWO-LOT SUBDIVISION

Date: May 21, 2009  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: VINCENT DOCE

----- X

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

1  
2 MS. HAINES: Good evening, ladies and  
3 gentlemen. I'd like to welcome you to the Town  
4 of Newburgh Planning Board meeting of May 21,  
5 2009.

6 At this time we'll call the meeting to  
7 order with a roll call vote starting with Frank  
8 Galli.

9 MR. GALLI: Present.

10 MR. BROWNE: Present.

11 MR. MENNERICH: Present.

12 MR. PROFACI: Here.

13 MR. FOGARTY: Here.

14 MR. WARD: Present.

15 CHAIRMAN EWASUTYN: Present.

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

21 MR. DONNELLY: Michael Donnelly,  
22 Planning Board Attorney.

23 MS. CONERO: Michelle Conero,  
24 Stenographer.

25 MR. CANFIELD: Jerry Canfield, Town of

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Newburgh.

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

MR. COCKS: Bryant Cocks, Planning  
Consultant, Garling Associates.

MS. ARENT: Karen Arent, Landscape  
Architectural Consultant.

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

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

MR. PROFACI: Please join us.

(Pledge of Allegiance.)

MR. PROFACI: Please make sure that  
your cell phones are off. Thank you.

MS. HAINES: The first item we have on  
tonight's agenda is the lands of Reed and Greco.  
It's a conceptual sketch plan on a two-lot  
subdivision located at 398 and 404 Candlestick  
Hill Road, it's in an AR zone and being  
represented by Vince Doce.

MR. DOCE: As Dina said, I'm here  
tonight to represent the Grecos and the Reeds on  
a request for a lot line change -- a two-lot

1 subdivision, effectively a lot line change,  
2 located on the property on the northerly side of  
3 Candlestick Hill Road.  
4

5 The present Reed parcel is outlined in  
6 orange here and it is 28,780 square feet in size.  
7 On the parcel is their house, a pool and a little  
8 shed in the back. The parcel has frontage on  
9 Candlestick Hill Road of 92 feet and the parcel  
10 is some 337 feet deep. It's generally  
11 rectangular in shape.

12 The Greco parcel is outlined in green  
13 plus the pink area and it's a parcel of property,  
14 it's 12 1/2 acres generally in size, 12.44 acres  
15 in size, and that has one single-family house  
16 located at that position on the property.

17 The Greco -- I mean the Reeds would  
18 like to increase the size of their lot a little  
19 bit since they have two children and they thought  
20 they would like to get a little bit more yard  
21 space. Mr. Greco has consented to deed that  
22 portion to him, that being the pink strip here  
23 that is 20 feet in width and runs along the  
24 easterly side of the Reed parcel.

25 There are no particular -- nothing

1  
2 particularly interesting about this swap of  
3 property or this here transaction.

4 We have shown the contours in the area  
5 of the Reed house, and as you can see the parcel  
6 drops off fairly gently to -- just before the  
7 house and then is generally flat throughout the  
8 rest of it.

9 The only other thing I would mention is  
10 that over in this area there is a small stream  
11 that is not shown on the property. We didn't  
12 locate it since it was so far away from the area  
13 that's of concern. It does generally -- you can  
14 see where that nose of the contour is, it's  
15 running through there.

16 The parcel is nonconforming now and  
17 will be still nonconforming in the future. The  
18 side yard setback on this side is 12 feet and  
19 will remain to be about 12 feet. The front yard  
20 setback is 35 feet from the road line and will  
21 continue to be 35 feet. The side line presently  
22 is about 42 feet to the house and about 32 feet  
23 to the carport, and that will be increased by 20  
24 feet so that it is some 52 feet from the carport.

25 Everything else on the map is fairly

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straightforward. I don't think there's anything that I could ask.

I would request that the Board waive the necessity for contours and topo on this large parcel of property. We will need several variances as I mentioned.

CHAIRMAN EWASUTYN: Thank you, Vince.

Bryant Cocks, do you want to go through the variances that will be required?

MR. COCKS: Certainly. The variances will be lot area, lot width, front yard, one side yard and both side yards.

My other comments were regarding topography. As Vince mentioned, we are able to waive that if the Planning Board feels it's not pertinent in the review of the plans.

This is technically a two-lot subdivision so it will require a public hearing when it gets back from the ZBA.

This is on the Town of Marlborough border so it will have to go to the Orange County Planning Department.

CHAIRMAN EWASUTYN: Thank you. Jerry Canfield.

1  
2 MR. CANFIELD: Just future submissions,  
3 Vince, if you could include the new flood panel  
4 maps. I think your plan referenced the old ones.  
5 I know it's not an issue. The flood zone is not  
6 an issue. If we could just reference the new  
7 panel numbers.

8 Also, with future submissions if we  
9 could have the correct identifying section, block  
10 and lot on the plan for identification purposes.  
11 The section, block and lot.

12 MR. DOCE: Placed directly on the plan?

13 MR. CANFIELD: And on the other one as  
14 well.

15 MR. DOCE: Okay.

16 MR. CANFIELD: That's all I have.

17 CHAIRMAN EWASUTYN: Pat Hines, Drainage  
18 Consultant.

19 MR. HINES: I don't have any comments  
20 that weren't already mentioned.

21 CHAIRMAN EWASUTYN: Before I ask the  
22 Board Members for their comments, maybe I'll put  
23 a motion on the table that we waive the  
24 requirements of the topo on this.

25 MR. MENNERICH: So moved.

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MR. GALLI: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Any comments from the Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing.

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: No.

CHAIRMAN EWASUTYN: John Ward?



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MR. WARD: No.

CHAIRMAN EWASUTYN: Then I'll move for a motion from the Board to have Mike Donnelly prepare a letter and refer this to the ZBA for a variance as Bryant Cocks mentioned, lot area, lot width, front yard setback, one side yard setback and both side yard setbacks.

MR. GALLI: So moved.

MR. BROWNE: Second.

CHAIRMAN EWASUTYN: I have a motion again by Frank Galli. I have a second by Cliff Browne. Any discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

I'm not used to having seven people.

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We have to get the chime in order, the rhythm.

MR. DOCE: Does Dina send it to the County?

CHAIRMAN EWASUTYN: Bryant Cocks will coordinate that.

MR. DOCE: Thank you very much.

MR. DONNELLY: At some point it will need to go to Orange County Planning. Before the hearing it will have to go to the Town of Marlborough. I don't know if you want to send it to them now.

CHAIRMAN EWASUTYN: Yeah, I think that's what Vince was asking. He'll coordinate that through Bryant.

MR. DONNELLY: Ultimately we'll need a copy for the Town, too. That's a requirement, that it be ten days before the hearing.

CHAIRMAN EWASUTYN: You'll manage that with Mike Donnelly.

MR. COCKS: Sure.

(Time noted: 7:10 p.m.)

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

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

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DATED: June 2, 2009

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

----- X

In the Matter of

SHOPPES AT UNION SQUARE  
(2007-05)

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

----- X

SITE PLAN

Date: May 21, 2009  
Time: 7:10 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: ADRIAN GODDARD

----- X

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

1  
2 MS. HAINES: The next item on our  
3 agenda tonight is the Shoppes at Union Square.  
4 It's a site plan located on Route 300 and Orr  
5 Avenue in an IB Zone and being represented by  
6 Adrian Goddard.

7 CHAIRMAN EWASUTYN: I had asked Adrian  
8 Goddard to appear before us tonight because  
9 Adrian has had many, many years experience in  
10 several counties as a retail developer, and as we  
11 all know we're working through some very changing  
12 times as far as commercial development, retail.  
13 I would ask Adrian if he would volunteer his time  
14 to educate the Planning Board on what's going on  
15 out in the market. So thank you for your time.

16 MR. GODDARD: Also I can give you an  
17 update on where we are. We were getting through  
18 -- we're pretty close to the end of the  
19 entitlement process. The market took its toll on  
20 our project. I think we've actually recovered  
21 from that to the point where I do expect to be  
22 back in front of you with an amended site plan  
23 sometime in the next sixty days probably.

24 We lost the bulk of like every ground-  
25 up development project in the region I think. We

1  
2 lost the bulk of the tenancy we had. Bankruptcy  
3 from Circuit City. There was all sorts of issues  
4 with -- even before you get to leasing the space  
5 up you have financing issues which, you know,  
6 become very important, very difficult. We're  
7 fortunate because the real estate is very good  
8 that I think we will be able to recover from that  
9 and bring a good project to the Town for us back  
10 in, you know, in sixty days or so. But the  
11 market has been -- has taken a toll on pretty  
12 much every ground-up project that I've seen in  
13 Orange County that was proposed.

14           Honestly, the only -- I think the only  
15 retail project which is under construction that  
16 I'm aware of in Orange County of any size is one  
17 we happen to be doing in Warwick, which is a  
18 supermarket which we leased years ago. You know,  
19 it just worked its way through the process and it  
20 was financeable and we were able to get it going.  
21 It's difficult out there.

22           If you guys have any questions about,  
23 you know, what the circumstances are, I'm happy  
24 to answer them. That's a general sort of  
25 overview. Only the very strongest guys that are

1 out there can get something done at this point,  
2 and you need -- in Orange County there isn't as  
3 big a problem as elsewhere but the amount of  
4 vacant space that's been created by bankruptcies  
5 and consolidations in suburban retail markets  
6 around the city is huge, and most of that space  
7 is going to have to be reabsorbed or taken --  
8 much as the housing market, taken control of  
9 before there's going to be anything of any  
10 substance that goes up to replace it or to add to  
11 it. Newburgh doesn't have a big overhang of  
12 vacant space but it's also not a primary market  
13 for a lot of the retailers that might otherwise  
14 be candidates. So when you have a marketplace  
15 where tenants are being very cautious about  
16 capital expenditures, they're going to tend to  
17 look at closer end, now very cheap existing space  
18 instead of considerably more expensive, ground-up  
19 projects in markets which are not core markets  
20 for them yet. So, you know, I think what we  
21 expected to see in Newburgh is probably going to  
22 take a few more years to happen, you know, than  
23 we thought a year ago. I think our project will  
24 get done. I hope some others do. It's a  
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difficult time.

CHAIRMAN EWASUTYN: I'll start with individual questions from Board Members. Frank Galli?

MR. GALLI: I have no additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. GODDARD: You know, it is what it is.

MR. MENNERICH: Can you give us a preview of how your project is going to change?

MR. GODDARD: Well there are going to be different tenants. We're working through what their site requirements are at this point. You know, I'm lining up financing, I'm trying to make site plan modifications. Usually in a ground-up project you have to be very close between what's an exhibit in a lease and what actually ends up getting built. We have to work out -- before I even come to you guys we have to work out exactly what we think is reasonable for the tenant to expect from the Town, and then we have to lock down the leases and then we have to line up the financing because you can't have any real gaps at this point. Not like you used to be able to sort



1  
2 of get some financing to start with based on  
3 what's called a letter of intent. Now you need  
4 the lease complete with a site plan that is very  
5 close to the one that, you know, will get  
6 approved by the Planning Board. It's a much  
7 tighter, more disciplined process, which is the  
8 impression I think of what everybody has of  
9 what's changed in the last few months. It's hard  
10 but, you know, I think there's probably some  
11 reason for that.

12 CHAIRMAN EWASUTYN: Joe Profaci?

13 MR. PROFACI: No thanks, John.

14 CHAIRMAN EWASUTYN: Tom Fogarty?

15 MR. FOGARTY: There are a number of  
16 projects that are obviously in the same situation  
17 that you're in. Where do you foresee it? In  
18 other words, where do you see it turning around  
19 insofar as I know you have a lot of rentals out  
20 there that it's a problem.

21 MR. GODDARD: Do you mean in Newburgh  
22 or --

23 MR. FOGARTY: In Newburgh. In  
24 Newburgh.

25 MR. GODDARD: I think that we're

1  
2 fortunate because the property's owned. We've  
3 come a long way through the process and it's not  
4 a giant project so the hurdle we have is lower  
5 than for some of the other projects which, you  
6 know, obviously, you know what I'm talking about,  
7 where a pre-leasing requirement, commitment have  
8 to be in a very large quantity before you can  
9 actually get a big project going. We have a few  
10 acres, it's attached to an existing -- successful  
11 existing shopping center. The hurdles are not  
12 that high, which is why I think we're going to be  
13 able to get over it. I'm pretty sure we're going  
14 to be able to get over it. It's not as easy for  
15 some others where the project is more demanding.

16 MR. FOGARTY: Thank you.

17 MR. GODDARD: You're welcome.

18 MR. WARD: I want to say thank you for  
19 coming.

20 MR. GODDARD: It's a pleasure.

21 MR. WARD: We did review some of your  
22 old site there where you did beautiful work.

23 MR. GODDARD: Thank you. I appreciate  
24 that.

25 CHAIRMAN EWASUTYN: I guess I have two

1 questions. One is what establishes a core market  
2 and why isn't Newburgh considered a core market  
3 yet? Is it the demographics, the income?  
4

5 MR. GODDARD: It's demographics. There  
6 are some -- for some of the newer tenants who are  
7 going to enter Newburgh, the opportunity -- I  
8 mean there are some that, you know -- I shouldn't  
9 name them because it's not my project but there  
10 were a couple that were major tenants who were  
11 new to the market and they have so many  
12 opportunities now nationally. You know, most of  
13 the real estate has been trimmed back because of,  
14 you know, just the general economy.

15 There was a directive from the CEO of  
16 one of these companies to go through every  
17 transaction that was not nailed down and attempt  
18 a forty-percent haircut. Any that went with it,  
19 fine. Any that didn't, we'll move on and come  
20 back later. It's been a fairly ruthless process  
21 by a lot of those guys. If the pro forma for a  
22 particular market is close, they're going to  
23 leave it and come back when it's a better pro  
24 forma, when they can get a much lower price. If  
25 it's Westchester where, you know, there's a store

1  
2 eight miles down the road which is doing  
3 \$1,000,000 a week, it's a much easier decision.  
4 You know, land cost is one factor, construction  
5 costs are another. Construction costs are fairly  
6 uniform across the tri-state area. The  
7 difference in cost between that Westchester store  
8 and the store in Orange County is not that great,  
9 and you're more confident in Westchester.

10 CHAIRMAN EWASUTYN: How much patience  
11 do these new tenants have with you as far as  
12 wanting sort of a complete agreement before they  
13 walk? Are you under --

14 MR. GODDARD: I want a complete  
15 agreement too because it's -- you know, this is a  
16 very capital expensive activity as you well know.  
17 There's no room for speculation at this point.

18 CHAIRMAN EWASUTYN: Okay. Are you  
19 under time constraints to deliver in most cases?

20 MR. GODDARD: I will be, yes. We're  
21 close to reaching agreements with the people we  
22 need to reach agreements with. I'm pretty sure  
23 we'll be able to complete the project within the  
24 next twelve to eighteen months.

25 MR. FOGARTY: Is it necessary for you

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to have an anchor store?

MR. GODDARD: Yes. It's an absolute non-starter without that. You can't -- just to give you an idea, we were able to finance, just like anyone else, ninety plus percent of the cost of a project which was probably anchored which was not too expensive, et cetera, et cetera. Now sixty-five to seventy is as much as you can get, and they'll take your children's left arm if you don't pay them. So it's a lot more difficult, it's a lot more capital intensive than it was a year or so ago.

CHAIRMAN EWASUTYN: This Board is always interested in knowing, and Mike Donnelly also said, what the times are, what is needed to be done to be reasonable and sort of provide a service and accommodate everyone, both the developer, the Town and the people in the community. So the purpose of having someone like yourself here was to sort of educate us on --

MR. GODDARD: I think that's great. I think that's a very enlightened approach. Other boards have a different attitude. I appreciate that.

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CHAIRMAN EWASUTYN: Any other questions?

MR. FOGARTY: No.

MR. HINES: Would you be looking at phasing?

MR. GODDARD: No. We're going to do it in one shot. We're going to do it in one shot. We thought about phasing. When we lost Circuit City we thought about piecemealing it together with what was left. You know --

MR. HINES: You have a lot of infrastructure costs up front there.

MR. GODDARD: Exactly. The difference in cost isn't enough to justify breaking it apart. For a different project it's a different idea perhaps. It doesn't make sense to phase it for us.

MR. HINES: Knowing that you have a whole bunch -- is there a point you're looking at now, do you need both those anchors there? Is there a point --

MR. GODDARD: I could do it with one.

MR. HINES: I don't want to talk too much.

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MR. GODDARD: I can but, you know, both makes it work well, one makes it go.

MR. HINES: Then you'll spec on the other stuff?

MR. GODDARD: Then I'll just negotiate for another six months with the same guys.

MR. HINES: We're seeing a lot of projects coming back phasing that weren't previously phased.

MR. GODDARD: That makes a lot of sense. If you've got one or two hard pieces, you've lost a bunch of the others, you try to do with what you have. In this case we looked at it and I don't think breaking it apart saves enough, you know, to make a piece of it worthwhile.

CHAIRMAN EWASUTYN: Any other questions from any of the members, consultants?

(No response.)

CHAIRMAN EWASUTYN: We really appreciate your time. Thank you. I look forward to seeing you in August sometime.

MR. GODDARD: Yeah. At least. Maybe before.

CHAIRMAN EWASUTYN: Great.

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SHOPPES AT UNION SQUARE

24

(Time noted: 7:22 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.

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DATED: June 2, 2009



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

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In the Matter of

ORCHARD HILLS  
(2003-41)

Route 9W & Oak Street  
Section 9; Block 1; Lots 45.21, 45.1 & 44.2  
R-3 & R-1 Zones

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CONCEPTUAL SKETCH PLAN  
TWO-LOT SUBDIVISION

Date: May 21, 2009  
Time: 7:23 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: ROSS WINGLOVITZ

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

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2 MS. HAINES: The next project on our  
3 agenda tonight is Orchard Hills. It's a  
4 conceptual sketch plan for a two-lot subdivision  
5 located on Route 9W and Oak Street. It's in an  
6 R-3 and R-1 zone and being represented by Ross  
7 Winglovitz.

8 MR. WINGLOVITZ: Good evening. Ross  
9 Winglovitz with Engineering Properties, Meadow  
10 Creek Development.

11 This is an application for a two-lot  
12 subdivision for the project known as Orchard  
13 Hills off Route 9W and Oak Street. This is an  
14 overall of the project. What we're talking about  
15 is creating this subdivision line to create two  
16 lots, one with the apartments and the rec  
17 facility and one with the town homes. The  
18 subdivision plan lays out like that, this being  
19 the apartment project, 15.75 acres; this being  
20 the town home project, 35.11 acres.

21 What we would like to do is proceed to  
22 process the subdivision application and obtain  
23 conditional final site plan approval for parcel A  
24 as the first phase, which is the apartments,  
25 while we're modifying parcel B, the town homes,

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2 to conform with the new concept that we submitted  
3 back in March which was without the connection  
4 and the subdivision, which is the loop road and  
5 the emergency connection out.

6 CHAIRMAN EWASUTYN: I'm going to start  
7 with comments from our Board Members. We'll  
8 start with Frank Galli first, please.

9 MR. GALLI: Ross, if you split this up  
10 like that is it still going to be feasible? You  
11 have to do all those other infrastructures.

12 MR. WINGLOVITZ: Is it still going to  
13 be feasible? It has to be, otherwise we wouldn't  
14 proceed on parcel A. The big cost is obviously  
15 the light at 9W and the sewer plant upgrade.  
16 Those are the two big costs.

17 MR. WEINBERG: We --

18 CHAIRMAN EWASUTYN: David, for the  
19 record would you give your name.

20 MR. WEINBERG: David Weinberg. The  
21 practicality is unless I was very confident that  
22 both parcels were going to go, we couldn't do  
23 this. The reason for us splitting this up now  
24 and proceeding with the first phase, the  
25 apartments, is my financing package that we're

1  
2 working on seems to be going faster and it's a  
3 better market right now to be able to finalize  
4 the apartment financing to proceed. That gives  
5 us enough to proceed. It gives us enough up-  
6 front dollars plus the monies we have to put in  
7 to be able to put the infrastructure in. It's a  
8 heavy infrastructure front-end cost. Knowing  
9 that we have the back 130 townhouses following  
10 that gives us the confidence that we can proceed  
11 and be able to do it.

12 CHAIRMAN EWASUTYN: Cliff Browne?

13 MR. BROWNE: From a planning standpoint  
14 I understand it, but from your understanding you  
15 feel that the market will support that currently  
16 the way -- obviously you do.

17 MR. WEINBERG: Yes. The market for  
18 apartments, okay, we think is very strong. The  
19 question there is really going to be obtaining  
20 the necessary approvals and financing to start  
21 that, okay. And the problem really is the amount  
22 of equity and capital that you need to start  
23 that.

24 MR. BROWNE: And the market for the  
25 condos you think is there or will be there?

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MR. WEINBERG: Yes. It's price, okay. It comes back down to the competition that we have in the area, okay, and price. What happens in this -- I don't want to -- I don't want to take -- my feeling is that if you price the units and give people value they'll sell. It won't be at the absorption that we were accustomed to or at the prices we were accustomed to. If you give them a good value and you keep the prices affordable you can sell in this market even today.

MR. BROWNE: Okay. There was some discussion about the possibility or you keeping the idea open that the condos may end up being rentals. Is that still the situation?

MR. WEINBERG: What the banks and financing institutions are telling me is that they want a back-up situation. If I start putting up townhouses and I can't sell them, they want to know that there's no prohibition and that I'm permitted as their exit strategy. That's what they talk to me about all the time is their exit strategy. Their exit strategy has to be that they can do something with these units, that

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2 they can finish the project, rent them until the  
3 time comes where the economy is changed or  
4 whatever it is. So as part of all of my projects  
5 that I'm doing with townhouses I've gone back to  
6 my boards and said I can't get this done unless I  
7 have the ability to be able to rent them if this  
8 market continues.

9 MR. BROWNE: I guess where this came  
10 from is the fire code difference between rentals  
11 versus the condo.

12 MR. WEINBERG: Okay. I'm not sure  
13 there is, okay. I mean the answer is we have to  
14 meet code. Whatever the code says we will meet.  
15 My understanding is that the form -- if it's a  
16 rental it's still going to be a condo  
17 association. That building is being built under  
18 a certain -- if I own that unit and decide to  
19 rent it, I don't think it changes the building  
20 code. I may be mistaken. I don't want to --

21 MR. BROWNE: That was part of our  
22 discussion during the work session. I think that  
23 may be a legal thing.

24 MR. DONNELLY: I think it's something  
25 you should first discuss and see if you can work

1 out to the satisfaction of Jerry and his  
2 department. Maybe there is a distinction between  
3 the overall unit owner renting units and  
4 individual rentals to condos, but if your bank  
5 were -- their exit strategy was that overall  
6 owner renting all of the units, that may have  
7 something to do with it.  
8

9 MR. WINGLOVITZ: We don't have a  
10 building code issue with having to rent the  
11 units.

12 MR. DONNELLY: The cost is not  
13 overwhelming anyway.

14 MR. WEINBERG: It may be we'll have to  
15 put them in because of the changing in codes  
16 anyway. On the apartments, when we know we're  
17 building garden apartments we know those are  
18 going to be rentals, we will go for the multi-  
19 family zone. I think they have to be  
20 sprinklered. The townhouses, okay, I didn't  
21 think that the form of ownership, okay, if it was  
22 either fee simple or condo or rental, made a  
23 difference. I thought it was the structure  
24 itself and the type of construction. But we'll  
25 discuss it and whatever -- whatever is

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appropriate we'll do.

MR. BROWNE: For me, aside from that issue, I don't have any questions. We've been through this thing for quite awhile now.

MR. WEINBERG: Too long.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Could you tell us if you have any contractual agreements with Parr as to when the sewage treatment plant has to be installed?

MR. WEINBERG: There are no contractual agreements.

MR. WINGLOVITZ: As to when.

MR. WEINBERG: As to when. I'm obligated to do it.

MR. MENNERICH: There's not a timeframe?

MR. WEINBERG: There's not a timeframe. They would love it, I would love it.

MR. WINGLOVITZ: They would like it to happen tomorrow.

MR. WEINBERG: And I would like it to happen tomorrow.

MR. DONNELLY: As long as you don't



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ORCHARD HILLS

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have to pay for it until next year.

MR. WEINBERG: It's an upfront cost. I can't do anything about it.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I don't have anything additional.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: Was it Oak Street that comes off of 9W?

MR. WINGLOVITZ: Oak Street.

MR. FOGARTY: I know there's that bridge there, then you take a hard right. Is that where you go?

MR. WINGLOVITZ: A hard left. Take the hard right on Oak Street, once you get to the top of the hill take a left.

MR. FOGARTY: Okay. What's going to be done with Oak Street?

MR. WEINBERG: We're not touching Oak Street. The only thing we're doing to Oak Street is we're doing the improvement to the culvert right when you get to 9W.

MR. WINGLOVITZ: That has to be replaced upfront.

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2 MR. WEINBERG: And then right at that  
3 property line we're putting in an emergency  
4 access which will be used for emergency purposes.  
5 Other than that we have no use of -- our vehicles  
6 will not be using Oak Street.

7 MR. WINGLOVITZ: Construction vehicles  
8 will be using Oak Street. That was part of the  
9 plan. This does have to be repaved when we're  
10 done.

11 MR. FOGARTY: Is that going to be fixed  
12 prior to -- I was up there the other day. That's  
13 a terrible --

14 MR. WINGLOVITZ: Turn.

15 MR. FOGARTY: -- turn right there.

16 MR. WINGLOVITZ: It needs to be  
17 upgraded with the bridge. It will be paved I  
18 think. We're going to pave it initially and then  
19 final coat it when we're done with using that for  
20 a construction entrance.

21 MR. WEINBERG: In fact, our approval  
22 states that that's the first thing we need to do  
23 is do the Oak Street improvement before we can  
24 start construction.

25 MR. WINGLOVITZ: Once construction is

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over that's no longer an access.

MR. HINES: Once construction in phase I is over.

MR. WINGLOVITZ: Yup.

MR. HINES: It's not a phase II construction access.

MR. WEINBERG: Right.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: The Board basically covered my questions.

MR. WINGLOVITZ: Thank you.

CHAIRMAN EWASUTYN: I'll turn it over to our consultants for their comments. Jerry Canfield.

MR. CANFIELD: We touched briefly about what we had talked about in the work session. To echo Cliff's comments, it's very important I believe at this point, not necessarily tonight, you're here for the two-lot subdivision and conceptually we have no issues with that. We talked about accessibility which you've done a great job in providing accessibility.

I do have a concern, though, with the future of phase II and identifying that. I

1  
2 understand your statements with regard to  
3 financing stuff, however I have a concern  
4 construction wise and fire code wise in  
5 determining at some point in the beginning what  
6 they will be.

7           And Ross, we can discuss this further,  
8 I know we had talked earlier this week about it,  
9 by definition of the building code what a  
10 townhouse is puts construction limitations on  
11 what you can do. Meaning that I believe the  
12 building code states that a townhouse is defined  
13 from the basement to the underside of the attic  
14 with two walls to the open outside, which means  
15 if you have a three-story building that three  
16 stories is one unit. I don't know if you're  
17 going to be able to make that an apartment in the  
18 future. So thinking of your needs and of course  
19 the building code, perhaps we may need to sit  
20 down and discuss the code application to this.  
21 It's not something that needs to be finalized  
22 tonight, however at some point in time you will  
23 be coming back for an amended site plan for phase  
24 II. Before that point it will have to be  
25 addressed.

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MR. WINGLOVITZ: Whatever we do we don't preclude whatever future use. You don't want to be in a position three years from now saying I can't get a CO because of the building code.

MR. CANFIELD: Exactly. That's very much a strong possibility that it will apply. But there are other issues as well. So as we discussed, we should prepare ourselves to address that, probably before the next submittal.

MR. WEINBERG: We'll work on that.

MR. CANFIELD: That's all I have, John.

CHAIRMAN EWASUTYN: When you say the next submittal, meaning the subdivision?

MR. CANFIELD: Yes. No. I'm sorry. The amended site plan.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant.

MR. HINES: Our first issue is to assure permanent access to the rear lot. I guess it's parcel B right now. To eliminate it being landlocked by this subdivision except for provisions for a roadway. So there will be a need for probably a temporary turnaround

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2 somewhere at the common property line or some  
3 mechanism of making sure that road can be  
4 extended and that there is access, physical  
5 access, to lot 2 in the future. That will  
6 probably need to be bonded as part of your  
7 improvements to ensure its constructed.

8 Just we'll work out with Ross's office  
9 in the future a cross grading easement. There's  
10 going to be more easements required for all the  
11 various utilities that are running back and  
12 forth.

13 There still is the modification to the  
14 detention ponds on lot 2. That's a site plan  
15 issue, not a subdivision issue.

16 I noted that you sent a short  
17 environmental assessment form in, but I believe  
18 we're going to go with the original SEQRA review  
19 and some amendments to that rather than a new  
20 SEQRA review process.

21 That's all we have. We'll be looking  
22 at the operation, maintenance of the utilities  
23 and making sure the sites all work together, that  
24 each can stand alone should they be built at  
25 separate times or they change ownership.

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CHAIRMAN EWASUTYN: Bryant Cocks,  
Planning Consultant.

MR. COCKS: My comments are regarding  
the easement and the need for an amended findings  
statement.

My only other comment was just the  
subdivision plan that was submitted just is going  
to need all the typical items, bulk table,  
location map, location of structures, for when we  
do need final approval.

MR. WINGLOVITZ: I'll call you and go  
over what you think we need. I understood your  
comment.

MR. COCKS: That was it.

CHAIRMAN EWASUTYN: Mike, in reference  
to the attached short form that was made as part  
of this application, I'll take responsibility for  
that for following the code as it relates to what  
is required.

Let's talk about SEQRA and how we would  
act on that tonight in reference then to asking  
the Board to set this for the 18th of June for a  
public hearing.

MR. DONNELLY: I thought that we were

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2 going to see all at once, and if I'm wrong  
3 correct me, would be the subdivision and the  
4 amended site plan or amended phased site plan.  
5 Am I incorrect? We're just looking at the  
6 subdivision first?

7 MR. WINGLOVITZ: Correct, just the  
8 subdivision.

9 MR. DONNELLY: Then SEQRA is going to  
10 really need to be in two steps. The first is an  
11 evaluation of any impacts that flow from the  
12 subdivision that were not addressed in the  
13 original environmental review. If there are  
14 none, issuance of a SEQRA consistency  
15 determination for the subdivision only, and then  
16 at a later stage the same approach to the amended  
17 site plan. I think we've pretty much concluded  
18 that there are no environmental impacts not  
19 addressed originally that flow from drawing the  
20 line on the piece of paper and cutting this in  
21 two pieces. While there may be some that flow  
22 from the phasing, they are probably not major  
23 ones. So if you feel comfortable with reaching  
24 that conclusion, you can direct the preparation  
25 -- you can vote on a SEQRA consistency



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2 determination, Bryant can prepare that, we can  
3 schedule this for a public hearing. Because it's  
4 a subdivision it would require a public hearing.  
5 I don't think this had a referral to the Orange  
6 County Planning Department. I don't think there  
7 was any trigger for that.

8 MR. HINES: It would have because it  
9 had a twenty-one lot subdivision associated with  
10 it previous. Now it's a new two lot.

11 MR. DONNELLY: It did go to the Orange  
12 County Planning Department?

13 MR. HINES: It had twenty-one single-  
14 family homes in the rear in the beginning of the  
15 process.

16 MR. DONNELLY: It will need to go to --

17 MR. WINGLOVITZ: I don't think it did.  
18 I think we need to.

19 MR. DONNELLY: My resolution doesn't  
20 say that it did.

21 MR. WINGLOVITZ: Our application was  
22 pre, pre --

23 MR. HINES: When they redid --

24 MR. WINGLOVITZ: -- pre the Orange  
25 County Planning requirement.

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2 MR. WEINBERG: That's how long ago this  
3 was.

4 MR. HINES: That's `03. Okay.

5 MR. DONNELLY: For the new Members so  
6 you understand, for many years State law required  
7 referrals of certain subdivisions and site plans  
8 that exceeded triggers, primarily proximity to  
9 things like State or County highways adjoining  
10 municipalities. When the trigger was met those  
11 projects would need to go to the Orange County  
12 Planning Department for review and report.

13 Fifteen or more years ago the Planning Department  
14 in Orange County felt that it didn't have the  
15 personnel to review all those and it entered into  
16 agreements within individual municipalities,  
17 which is permitted under the State law, to opt  
18 out of that requirement. Roughly two or three  
19 years ago the County decided to re-enter into  
20 that procedure. Since that time referrals need  
21 to be made. This is probably the first time  
22 we've now seen a project that wasn't referred  
23 because it was in the hiatus period that now has  
24 an amendment to it. Generally speaking, the  
25 Planning Board's position when they first came up

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2 with the policy is that only applies to new  
3 applications, meaning applications filed and  
4 received by the Planning Board after the  
5 effective date of the return to the old policy.  
6 Consistent with that you can take the position  
7 that since this application has been around for  
8 all these years it is not a new one and therefore  
9 does not need to go to the Orange County Planning  
10 Department. If you felt you wanted to send it  
11 there you could in any event. That's what it  
12 was. It didn't go because that's what the  
13 resolution said. I was wondering why it didn't.  
14 I think that's, John, a matter of policy. I  
15 think you should be consistent with that. I  
16 think given the policy that the Planning  
17 Department had issued that many years ago, that  
18 this would be required to be referred.

19 CHAIRMAN EWASUTYN: Okay. Any  
20 questions from the Board Members on Mike's  
21 comments?

22 MR. FOGARTY: John, I have one. I  
23 don't know if it pertains to this project. Let's  
24 say the project comes before the Planning Board  
25 that the trigger is it's sent out to the Orange

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2 County Planning Department, however as time goes  
3 by and they do it into phase I and phase II and  
4 neither one of those phases would trigger, you  
5 know, sending it out to the Orange County  
6 Planning, is there some -- I don't even know  
7 where the question is in all of this but the  
8 thing is you originally had a project that did,  
9 now you have it cut in two and it doesn't.

10 MR. DONNELLY: I think that's a good  
11 question. I think you might look to how the  
12 Orange County Planning Department reported on it  
13 in the first instance. In other words, if when  
14 you sent it their response was there are no  
15 intra-governmental concerns raised by this  
16 project, it is solely a matter of local concern.  
17 Now if the Planning Board said it didn't have any  
18 concerns of an intra-municipal nature, then it  
19 wouldn't matter how many phases you cut it into,  
20 it wouldn't have to go back. However, if what  
21 the report said is we're concerned with, and it  
22 mentioned five issues that then become prominent  
23 and are altered by the phasing plan or a  
24 subdivision, then I think it would be appropriate  
25 to send it back to them for further comment. I

1 think that's consistent with the spirit of that  
2 statute. Also, David Church's office is very  
3 sincere and interested in giving the referrals.  
4 I don't think they're interested in things being  
5 resent to them when minor changes are made or  
6 where they have already decided it's a matter of  
7 local concern. It increases their overhead and  
8 it doesn't do anybody any benefit. The purpose  
9 of the referral is to assist you so the planning  
10 department can bring matters of intra-municipal  
11 concern that you might not have recognized and  
12 you can factor them in to your decision making.

14 MR. FOGARTY: Thanks.

15 CHAIRMAN EWASUTYN: At this point I'll  
16 move for a motion from the Board to approve a  
17 SEQRA consistency determination for the two-lot  
18 subdivision for Orchard Hills and also to grant a  
19 conceptual sketch plan approval.

20 MR. MENNERICH: So moved.

21 MR. PROFACI: Second.

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

25 (No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Bryant, you'll prepare the SEQRA consistency determination.

MR. COCKS: This is not going to the County?

CHAIRMAN EWASUTYN: No, it's not.

The next motion I'll move for is to set this for a public hearing for the 18th of June 2009.

MR. PROFACI: So moved.

MR. GALLI: Second.

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

MR. BROWNE: Yes. It's just for the

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ORCHARD HILLS

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two-lot subdivision, nothing else; correct?

CHAIRMAN EWASUTYN: Correct.

I have a motion made by Joe Profaci, I have a second by Frank Galli, discussion by Cliff Browne for a public hearing for the 18th of June for just a two-lot subdivision. I'll move forward with a roll call vote on that.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Thank you. See Dina about the notice.

MR. WINGLOVITZ: Yup. We'll do that.

Thank you very much.

(Time noted: 7:45 p.m.)

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

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

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DATED: June 2, 2009



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

----- X  
In the Matter of

GASLAND PETROLEUM  
(2008-01)

Route 17K & Homewood Avenue  
Section 95; Block 5; Lot 9.2  
IB Zone

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SITE PLAN  
ARCHITECTURAL REVIEW BOARD

Date: May 21, 2009  
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  
THOMAS P. FOGARTY  
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVE: CHRISTOPHER LAPINE

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2 MS. HAINES: The last project on our  
3 agenda tonight is Gasland Petroleum. It is here  
4 for site plan and ARB. It's located on Route 17K  
5 and Homewood Avenue in an IB Zone. It's being  
6 represented by Christopher Lapine.

7 MR. LAPINE: Good evening, Mr.  
8 Chairman, Members of the Board. We were last  
9 before the Board on April 16th with this project  
10 in which we were asked to address some what I  
11 felt would be minor comments from your  
12 consultants, and I gave you an idea of the  
13 architecture that we're proposing for the  
14 building. We then pursued finalizing the  
15 architectural to be submitted to the Board.

16 The changes that we made regarding the  
17 site plan were the removal of the upper blocks  
18 along the front of the building. We added the  
19 center island striping as proposed. We also  
20 incorporated some directional signs within the  
21 site. There was a request on behalf of the  
22 engineer to clean out the existing trench drain  
23 along the front, which the applicant did. We  
24 also made some edifications to our landscaping  
25 plan as requested by the landscaping consultant.

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2 We identified all stonewalls to be three feet in  
3 height as opposed to the two foot that were  
4 previously shown. We provided a landscaping plan  
5 -- not landscaping, a lighting plan as well. The  
6 photometrics indicated minimum spillage of light  
7 onto the adjoining roadways.

8           The one issue which came up within  
9 which Bryant identified at review was the size of  
10 the lights. We're actually using eighteen-foot  
11 high light posts as opposed to sixteen because we  
12 wanted to minimize the number of light posts on  
13 the site. Sixteen would require probably four or  
14 five more in order to get illumination. It's  
15 pretty safe for the users. We tried to use an  
16 antique type of light to make up for the fact  
17 that we're going with a slightly higher than  
18 recommended light. That was the major -- well  
19 the changes that we made to our site plan.

20           I also brought with me this evening the  
21 elevations which we discussed and which are in  
22 the packets that we gave to the Planning Board.  
23 We had given full size, an 11 by 17.

24           As we discussed at the last Planning  
25 Board, the applicant is preparing -- is proposing

1  
2 brick with a stucco exterior, a hip roof all the  
3 way around.

4           There was also a concern about the  
5 equipment being visible. In our elevations,  
6 which you probably already reviewed, we've shown  
7 that the equipment will be in the rear of the  
8 building placed on the roof so it won't be  
9 visible to users of the site or anybody driving  
10 by the site. We've provided the Board with  
11 samples of the material that the applicant  
12 proposes to use. I'll also show you the canopy  
13 that's being proposed as we indicated. It has a  
14 hip roof with the name of the gas station on it.

15           Unfortunately what we did not provide  
16 to the Planning Board was a signage table I read  
17 in one of the comments. We pretty much made the  
18 assumption that they would be scaled off our  
19 plans. Knowing the code requires signage on a  
20 site having no more than half the length -- the  
21 area of your signs can be no more than half the  
22 length of your frontage, this project in  
23 particular has three frontages which are along  
24 Route 17K, Homewood Avenue and Tighe Avenue.  
25 This is what was determined during our variance

1 review. The approximate length of that was 640  
2 feet in our frontage which would mean that we  
3 could have a signage area of 320 square feet.  
4 The applicant is proposing two Shell signs which  
5 are 2 by 5 each, they'll be internally  
6 illuminated and diffused; a Dunkin Donuts sign  
7 which will be 3 by 8 internally illuminated and  
8 diffused, the colors are shown on the plan; and  
9 is proposing to utilize their existing sign which  
10 is approximately 8 by 16. The total area there  
11 is 175 square feet which is less than the  
12 allowable 320. We recognize that those  
13 calculations aren't on our plans this evening but  
14 we wanted to share that with the Board because  
15 they're the approximate calculations for our  
16 signage.  
17

18 I open it up to the Board with any  
19 questions.

20 CHAIRMAN EWASUTYN: I'd like to, if  
21 it's all right with you, start with any questions  
22 from the Board Members with the first part of  
23 your presentation, that being the site plan, and  
24 then from that point we'll take the second part,  
25 the ARB.

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Frank Galli?

MR. GALLI: I just had a question on the signage, John.

CHAIRMAN EWASUTYN: All right.

MR. GALLI: If you just took your Route 17K frontage what would be your sign allowance?

MR. LAPINE: 120, approximately 241 --

MR. GALLI: 175?

MR. LAPINE: Correct.

MR. GALLI: If you change the price of gasoline you might be able to --

MR. NESWEIT: That was the price when we first came in before.

CHAIRMAN EWASUTYN: Cliff Browne ?

MR. BROWNE: I'm good with the site plan.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I don't have any questions. I think some of the consultants will be addressing them.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No questions.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I was just wondering, how

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much larger is the new building versus the one that's there now?

MR. LAPINE: The new building is approximately 3,400 square feet. The existing building was, if I recall, about 1,250 square feet.

MR. NESWEIT: Can I say something?

CHAIRMAN EWASUTYN: For the record just give your name, please.

MR. NESWEIT: My name is David Nesweit. The canopy that exists now is pretty much almost the entire parcel. It looks like the whole building compared to the new canopy which is a lot smaller. So it's going to look -- it's going to compensate.

MR. LAPINE: The current canopy is approximately 7,300 square feet and it's over top of the existing building which is beneath it. Our proposed building is 3,400 square feet and the canopy is approximately 27, 28.

MR. FOGARTY: The canopy meaning where the --

MR. LAPINE: Above the pumps.

MR. FOGARTY: Above the pumps?

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MR. LAPINE: Correct.

MR. FOGARTY: And in the back just review for me what is going to happen with that wall that is kind of cracking up.

MR. LAPINE: As we discussed at the last Planning Board meeting, we're going to utilize the existing stone face as our -- for our elevation difference as opposed to constructing another wall in the front of it. In the event that the stonewall is unsuitable for its use and it continues to crumble or crack during the course of construction, we had provided the other stonewall at our last Planning Board meeting that we would use as an alternative. To address that we added a note to the plan indicating that both the town engineer and the project engineer will make that determination during the course of construction as to whether or not that wall is suitable in the course of construction.

MR. FOGARTY: I think it's going to crumble because it is pretty broken up now.

MR. LAPINE: Some of it is just the face. That gets weathered.

MR. HINES: It's going to be excavated



1 significantly back further than it is now, that  
2 face you have there now, and I have a note  
3 requiring some blasting notes. They're going to  
4 be well into that bedrock face that's currently  
5 exposed probably by another 20 feet.  
6

7 MR. LAPINE: We're trying to minimize  
8 any blasting so that, you know, we don't impact  
9 the integrity of the existing rock.

10 MR. FOGARTY: So you're moving beyond  
11 that thing?

12 MR. HINES: They're going way back. It  
13 will be about 13 feet high, the rock wall, at the  
14 rear of the property at the highest point.

15 MR. FOGARTY: Thanks.

16 MR. MENNERICH: Just bringing up the  
17 fact of the height of the wall being 13 feet, or  
18 whatever it is. Getting back to the light level,  
19 you know, being above the guidelines, I don't see  
20 it as a big issue because of the backdrop that  
21 you have there.

22 CHAIRMAN EWASUTYN: The 18 foot pole?

23 MR. MENNERICH: Yeah.

24 CHAIRMAN EWASUTYN: John Ward?

25 MR. WARD: Well I was going to ask

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what's the reason why you want it 18 feet compared to 16 following the guidelines?

MR. LAPINE: We're just trying to minimize the number of poles for such a small site.

MR. WARD: And on the site plan I mentioned about the drive-through. I don't see anything about signage for the drive-through.

MR. LAPINE: We actually have provided signage on the details which relate to the drive-through signs on the site.

MR. WARD: As long as the sign is there.

MR. LAPINE: There are directional signs. We have a key on SP-1.

MR. WARD: And the existing parking for the size you have compared to -- how many more spaces are there going to be and how many handicap?

MR. LAPINE: There are two handicap spaces proposed on this plan as it is. There's a total of 25 spaces proposed. Currently existing there are 12 spaces in addition to -- I don't have the existing conditions today with me but I

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believe 5, so it would be 17.

MR. WARD: Thank you.

CHAIRMAN EWASUTYN: Jerry Canfield, I know you had a comment in reference to the --

MR. CANFIELD: On the water line. Chris, you show an inch-and-a-half copper line.

MR. LAPINE: Correct. We were provided that by the architect/mechanical engineer preparing the plans. I've since relayed the concerns of both yourself and Pat to the individual who provided us the size that --

MR. CANFIELD: Yeah.

MR. LAPINE: -- you feel is inadequate. I asked him to revisit your calculations.

MR. CANFIELD: Okay. To determine the size of that line we'll actually need to see the hydraulic calculations of your system demand. It's doubtful that inch-and-a-half copper will make it. You probably will be into something like a four-inch duct line pipe. If I may suggest also, you may want to talk with the water department. I'm not so sure, although I didn't put it as a comment, but looking at the way it was routed, I'm not sure that may be acceptable

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to him. You may want to touch base with the water department.

Also on that, and Pat's comment also, we request that the water -- the fire and domestic line be split outside the building, not inside the building. I think Pat has a comment on the detail of that.

Also I understand you had called my office late this afternoon with a question about the signage.

MR. LAPINE: Correct.

MR. CANFIELD: Your presentation regarding, the allowable signage for the Board Members benefit is accurate. The site does lend itself to three front yards, therefore he's entitled to credit for all that linear distance, but I don't know -- I believe Karen has comments on it. I don't know that we've actually seen a detailed sign plan. I don't know if that's been submitted or not. I think Karen may have a comment on that.

MR. LAPINE: You're correct.

MR. CANFIELD: One last thing, Chris. I'm sorry. On the signage, I think your question

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2 was with respect to the existing signage. There  
3 still is an ongoing enforcement action. I know  
4 it's something different than what we're here for  
5 tonight but I know some of the Board Members have  
6 inquired about the status of it. John Adams, I  
7 believe the attorney still representing you, has  
8 been working with counsel for the Town of  
9 Newburgh, Mark Taylor from Rider's office. The  
10 Town is in the process, as you are all aware, of  
11 rewriting the illumination and the diffusing  
12 portion of the signage. That has kind of pretty  
13 much put a stay or a hold so to speak on the  
14 enforcement action until we get actual  
15 definitions of the signage. So just for  
16 everyone's benefit, that's where that action  
17 stands.

18 CHAIRMAN EWASUTYN: Pat Hines,  
19 outstanding comments on the site plan.

20 MR. HINES: They have addressed the  
21 majority of our comments. The ones that Jerry  
22 just touched on, the inch-and-a-half water  
23 service, needs to be addressed.

24 The sprinkler detail.

25 The standard note on the Town of

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Newburgh standard notes, you snuck another one in, note 14. That one has to be --

MR. LAPINE: Regarding the existing water?

MR. HINES: I'm not sure what it was. It's not consistent.

MR. LAPINE: What we were trying to do in that note is the surveyor provided us the information as it relates to the location of the existing water main, gave us an approximate. It wasn't marked out by the Town prior to a survey. We're just making a note on the plan that the contractor needs to mark this out and verify the location prior to construction.

MR. HINES: I don't remember exactly what the note is. I can look. It should be outside the Town standard notes. We can move it somewhere else if you want to keep it there. It just caught my eye, hey that's not one of the Town's notes.

MR. LAPINE: You're correct. I just wanted to make sure the contractor is aware of the location of the water line.

MR. HINES: And then I think there

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should be a note on the plans that if blasting occurs on the site a permit is required, and cite the particular code that does require that.

They've addressed the majority of our comments. I think we're down to some minor technical issues on our comments. I wouldn't have a concern if there was a conditional approval.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant.

MR. COCKS: Just a reference that we did receive approval on this from the City of Newburgh for sewage flow, the New York State Department of Transportation for the issuance of a highway work permit, and also the Orange County Planning Department.

The only site plan issue I had was just indicate that bollards are shown on SP-2, which is the site plan.

MR. LAPINE: Right here, here and here.

MR. COCKS: I saw it on the legend, I just couldn't identify where they were on the plans.

MR. LAPINE: They're right here.

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They're called out for both bollards here, here.

MR. COCKS: It's on the corners?

MR. LAPINE: Yes.

MR. COCKS: I didn't know -- sometimes businesses like them in front of the business so cars don't drive directly in. We saw that at another convenience store that was coming in. That's okay.

My next comment was regarding the height of the light pole which I think the Planning Board still would need to make some type of determination on. Other than that, I think everything has been addressed.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect.

MS. ARENT: I have minor comments. Your planting details, you're choking your trees. You just have to free the root ball of the tree so it's not buried in soil.

I made a note that the signs -- I mean, sorry, that the lighting is going to be below the top of the light which will be right below this part of the building. I thought it related in scale fairly well to the building. It's going to



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2 be a little bit higher than the canopy. It will  
3 be a little bit higher than the canopy. It will  
4 be right up in here. Overall I think it works  
5 well with the scale with everything. I thought  
6 that it might even be better to have the higher  
7 lights than a whole bunch of poles on the site.  
8 You know, that's something that the Board might  
9 want to consider when reviewing that.

10 And the other comment I had was that  
11 there's a light overhanging the garbage dumpster  
12 area. When the trucks drive in will that be a  
13 problem, when it goes to collect the garbage?

14 MR. LAPINE: We can revisit that. We  
15 thought we had enough distance. We can check  
16 with the garbage hauler.

17 MS. ARENT: Just double check that.  
18 That's the last thing you want, spending a lot of  
19 money on a nice light and have it not be nice  
20 anymore.

21 I had a couple comments on the  
22 architecture. I don't know if you want me to go  
23 over that now.

24 CHAIRMAN EWASUTYN: Let's hold off on  
25 that.

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MS. ARENT: That's it.

CHAIRMAN EWASUTYN: Ken Wersted,  
Traffic Consultant, any outstanding comments?

MR. WERSTED: No outstanding comments.  
I reviewed the site plan and previous comments  
and they have all been addressed.

CHAIRMAN EWASUTYN: John, you had  
something you wanted to say?

MR. WARD: No, thank you.

CHAIRMAN EWASUTYN: All right. Before  
I turn to Mike Donnelly to give us conditions for  
final approval for the site plan, I'll poll the  
Board Members as far as their preference for  
light posts. Karen has reviewed the scale of the  
eighteen-foot light post and finds that to be  
within overall harmony of the site.

Frank Galli?

MR. GALLI: I think eighteen foot would  
be fine. We're getting less poles also.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: I think even though it  
doesn't meet the number the guideline gives, I  
think it meets the intent and I think that's the  
overall purpose. So yes.

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CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: For this location and site plan I think it's acceptable.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: It's acceptable.

MR. FOGARTY: I just have one question so far as with the lights being higher now. I know there's some -- is it Homewood Avenue or whatever the name of that --

CHAIRMAN EWASUTYN: Homewood.

MR. FOGARTY: I know there's some homes over there. Is that going to impact them by sending out more light into the neighborhood by having the higher light?

CHAIRMAN EWASUTYN: How is that light diffused?

MR. LAPINE: In terms of our photometric plan, and I'd have to open up my plans to get that information for you, we have less than half a foot candle spilling over the property line. So going towards Homewood Avenue, without opening up the plans, I think we're pretty much at zero with the diffusion from our site onto -- the illumination from our site onto

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Homewood Avenue.

MR. HINES: There's a pretty good grade change there.

MR. LAPINE: And in the rear of the property, as indicated, there's an eighteen-foot grade difference. We have our wall but then it continues to go up in elevation along Tighe Avenue.

MR. FOGARTY: I'll vote in favor of the eighteen.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: Basically everybody covered my questions. I accept that. It's fine.

MR. LAPINE: Thank you.

CHAIRMAN EWASUTYN: Mike Donnelly, Planning Board Attorney, can you give us conditions for approval for the site plan?

MR. DONNELLY: This is a Type II action under SEQRA, so no compliance is required. You waived the public hearing at your meeting in April. You have two design guideline requirements. You'll need to make findings of waiver. I heard, and I will include in the resolution, the reason for waiving the light pole

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2 requirement. There's also the design guideline  
3 waiver needed for parking in the front yard. My  
4 notes don't reflect, although you did discuss it,  
5 that you ever made any particular finding in that  
6 regard, and that would need to be done in the  
7 resolution.

8 In terms of the resolution itself,  
9 we'll need sign-off letters from Pat Hines, from  
10 Bryant Cocks and from Karen Arent on the comments  
11 in their memos from this last month. The DOT and  
12 the City of Newburgh have issued their approvals  
13 already but I will make reference to them. The  
14 Zoning Board granted a variance, and as usual we  
15 will recite that variance within the resolution.

16 I'm still a little confused on what  
17 we're doing with the signs. Are we showing the  
18 LED price sign on the plan?

19 MR. LAPINE: The existing?

20 MR. DONNELLY: Right. At least until  
21 -- that's subject to the enforcement action, and  
22 at least until the Town amends the ordinance we  
23 can't approve a sign that is not permitted, and  
24 the Zoning Board made a determination to that  
25 effect. So I think we can include a provision

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2 that says the approval does not constitute an  
3 approval of the signs shown on the plan, that may  
4 need further either legislative or variance type  
5 relief, and then if shown but they're not  
6 approved. You'll have to follow through on that  
7 course to see where it goes.

8 And then finally we'll need a water  
9 department sign off on the water line location.  
10 We've tied into the size in Pat's memo and  
11 Jerry's.

12 I take it this will need a landscape  
13 security and stormwater security and inspection.

14 MS. ARENT: Yes.

15 MR. DONNELLY: No other security is  
16 needed. There's no offer of dedication required.

17 CHAIRMAN EWASUTYN: So at a future date  
18 the applicant will come back and we will then  
19 approve the signage for the LED sign.

20 MR. DONNELLY: It can't be approved  
21 until after the Town Board amends the code.

22 CHAIRMAN EWASUTYN: We'll come back for  
23 that. Okay.

24 Frank Galli.

25 MR. GALLI: John, does he have to come

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2 back if the signage that he shows us tonight is  
3 the exact same signage that he's going to use  
4 once the Town does their thing to change the sign  
5 ordinance for that particular sign? Can we do it  
6 through Board Business?

7 CHAIRMAN EWASUTYN: Good idea. We'll  
8 do that if the Board is in agreement. I'll poll  
9 the Board Members. Once the Town Board takes  
10 action to adopt new signage regulations, and if  
11 the LED sign which is proposed currently is  
12 approved, then I'll poll the Board Members if we  
13 can act under Board Business to approve this  
14 outstanding item.

15 MR. GALLI: Yes.

16 MR. BROWNE: Can I make a comment on it  
17 first, John?

18 CHAIRMAN EWASUTYN: Go ahead.

19 MR. BROWNE: I would definitely agree  
20 with that. However, if they are ready to proceed  
21 before the Town does their thing, then they're  
22 going to have to come back to us with an amended  
23 sign. I don't know how you want to --

24 CHAIRMAN EWASUTYN: I would hope that  
25 it isn't that far away.

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MR. DONNELLY: They could build, they just can't put any signs up.

CHAIRMAN EWASUTYN: And the one that's currently up they would not be able to --

MR. DONNELLY: That's subject to the enforcement action.

MR. GALLI: I don't think it's that far out.

CHAIRMAN EWASUTYN: I don't think so.

MR. LAPINE: You're referring to the existing pylon sign?

CHAIRMAN EWASUTYN: Right.

MR. LAPINE: The other signs would be acceptable?

MR. GALLI: The other signs are acceptable as far as I'm concerned. Like the Dunkin Donuts sign.

CHAIRMAN EWASUTYN: Karen is looking at the details which aren't shown now. They don't have a table and a chart on there. So in that case we can approve those subject to Karen's sign off on the square footage as it relates to the allowable area.

MR. MENNERICH: I guess I don't have a



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2 problem with the square footage and going ahead  
3 with the approval of that, but what the Town is  
4 considering relative to the lighting standard and  
5 what's diffused lighting and whether LEDs are  
6 allowed and all that, that could affect the signs  
7 as far as, you know, internally lit signs. Is  
8 that going to end up being acceptable?

9 MR. CANFIELD: A question, John.

10 Chris, I know the applicant has sign  
11 applications in before the building department  
12 right now which were disapproved, sent to the  
13 Zoning Board which were disapproved, okay. Those  
14 signs that are on the application, is that what  
15 you're proposing?

16 MR. LAPINE: Correct.

17 MR. CANFIELD: The signs that you've  
18 already applied for, basically what is out there?

19 MR. LAPINE: Yes.

20 MR. CANFIELD: It's one in the same.

21 CHAIRMAN EWASUTYN: Why don't we  
22 simplify. We're now beginning to spend a lot of  
23 time talking about something we can do one of two  
24 ways. At this particular time we won't be  
25 approving any signage subject to the Town

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2 adopting the new signage regulations. If  
3 everything that is being shown here is in  
4 compliance with the new regulations, than under  
5 Board Business at a future date we'll approve the  
6 signage, still subject to Karen reviewing the  
7 area square footage.

8 MR. CANFIELD: Exactly.

9 CHAIRMAN EWASUTYN: The issue of  
10 illumination and what type we hope would be  
11 covered under the amended sign --

12 MR. CANFIELD: I think the very fact  
13 that there's an active application for just that  
14 sign, that makes it a separate issue in itself.

15 MR. DONNELLY: I think John's  
16 suggestion is a good one. Leave the signs out of  
17 it for now.

18 CHAIRMAN EWASUTYN: So Mike, any  
19 changes to the resolution?

20 MR. DONNELLY: I'll just include a  
21 provision that says the signs shown on the plan  
22 are not approved at this time and will not be  
23 approved until such time as Karen has signed off  
24 on the detailed signage plan and until the Town  
25 Board has taken legislative action that will

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permit the type of sign shown.

MR. LAPINE: That's regarding the existing pylon?

MR. DONNELLY: All of the signs. We're not approving any signs until that's clear.

CHAIRMAN EWASUTYN: This is a Type II action, meaning it's under 4,000 square feet, so there's no need for a SEQRA determination.

At this point I'll move for a motion to approve the Gasland Petroleum site plan subject to the conditions having been stated by our Attorney, Mike Donnelly.

MR. BROWNE: Mike brought up we needed to talk about the parking and why --

CHAIRMAN EWASUTYN: He's going to write that in. He's going to make that determination in writing. Bryant had discussed that. Karen had discussed that at an earlier meeting.

MR. BROWNE: I thought I heard Mike say he didn't have --

MR. DONNELLY: I didn't have any notes as to what your rationale was for waiving.

CHAIRMAN EWASUTYN: Karen, could you explain that?

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MS. ARENT: The consultants showed landscaping and stonewalls to help mitigate the visual impact of parking.

MR. HINES: The lot also has three front yards.

MS. ARENT: The lot has three front yards.

MR. DONNELLY: It's pretty hard to do. I've got it.

MS. ARENT: From my point of view they have mitigated through stonewalls and landscaping.

MR. BROWNE: Thank you.

CHAIRMAN EWASUTYN: Then I'll move for a motion to approve the Gasland Petroleum site plan subject to the conditions of the resolution prepared by Mike Donnelly, Planning Board Attorney.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye. So carried. Thank you.

Comments from the Board Members on the ARB presentation. I'll start with Frank Galli.

MR. GALLI: I have no additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: The canopy is going to cover all your fire extinguishers and other stuff; correct?

MR. LAPINE: The equipment is going to be located in the rear back here, elevated.

MR. BROWNE: The canopy over the --

MR. LAPINE: I'm sorry.

MR. BROWNE: -- pumps, that will be totally enclosed?

MR. LAPINE: Correct.

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MR. BROWNE: That's all.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Just a question that the handouts that we got showed slightly different colors than what you had. Which is the correct color?

MR. LAPINE: It's just a matter of a different -- I actually brought with me additional samples. This is the color that will be utilized. This is the brick and this is the stucco.

MS. ARENT: Chris, those colors are very close. They don't have a differentiation like you're showing.

MR. LAPINE: I'll bring them over to you.

MS. ARENT: It just looks like -- the building will look more or less like one color rather than the two separate colors that he's showing.

MR. NESWEIT: You can go to Route 44 in Poughkeepsie. They have the same exact colors, and that's where we got our samples from. It's hard to see it from a small little piece.

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MR. LAPINE: If the Board would like I can take a picture of that building that is actually constructed.

MS. ARENT: No. That's fine.

CHAIRMAN EWASUTYN: I actually -- I was in Poughkeepsie. I looked for it in Red Oaks Mill.

MR. NESWEIT: Route 44 in Poughkeepsie, the Shell is up, the facade is complete.

CHAIRMAN EWASUTYN: No wonder I couldn't find it.

Ken Mennerich, anything else?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I think it looks very nice.

MR. FOGARTY: Nothing else.

MR. WARD: How much higher is it from what's the existing canopy on the roof right now? How much higher will it be?

MR. LAPINE: I don't honestly know the size of the existing canopy.

MR. NESWEIT: The whole site is sunken in anyway, so --

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CHAIRMAN EWASUTYN: Jerry, any comments on the ARB?

MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: Pat?

MR. HINES: No.

CHAIRMAN EWASUTYN: Bryant?

MR. COCKS: No.

CHAIRMAN EWASUTYN: Karen?

MS. ARENT: I have a couple of questions. The canopy -- could you put the picture up? Can you show us what exactly will be illuminated? Will that whole entire stripe be illuminated?

MR. LAPINE: The Shell --

MS. ARENT: Can you just make a note on the architectural drawing saying that's the only thing that will be illuminated?

MR. LAPINE: Certainly.

MS. ARENT: And the --

MR. NESWEIT: That's just a decal sticker, it's not like a neon strip.

MS. ARENT: Good. I just wanted to make sure. From the drawing -- if you could write that, Chris. Describe that on the drawing



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and make sure we're speaking the same language.

We're going to need the table of signage on your architectural drawings. You have to include logos on any directional signs that you have. Like if you're going to write Dunkin Donuts drive-through, the Dunkin Donuts counts towards your signage.

MR. LAPINE: Okay.

MS. ARENT: Make sure you include directional signs if you have a logo.

MR. LAPINE: We didn't --

MS. ARENT: Then you don't need to include that calculation on your signage table.

I thought the way you're hiding the canopy is the best thing you could do on the site. It's a very nice idea. I don't think anybody is going to see them. There's going to be a big wall and you're not going to notice that. That was a good thought, so thank you. That's it.

CHAIRMAN EWASUTYN: Having heard the comments from the Planning Board Members and also from our consultants, I'll move for a motion to grant ARB approval for the Gasland Petroleum site

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plan.

MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

Thank you for your time and patience.

MR. NESWEIT: Thank you very much.

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

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

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

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DATED: June 2, 2009

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

----- X

In the Matter of

PHARMACY & BANK  
(2006-57)

Amended Site Plan Approval

----- X

BOARD BUSINESS

Date: May 21, 2009  
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  
CLIFFORD C. BROWNE  
KENNETH MENNERICH  
JOSEPH E. PROFACI  
THOMAS P. FOGARTY  
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVES: THOMAS DePUY,  
TIMOTHY O'BRIEN & JOSH BEYER

----- X

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

1  
2 MS. HAINES: The first item we have  
3 under Board Business tonight is a pharmacy and  
4 bank. They're here for their amended site plan  
5 approval.

6 CHAIRMAN EWASUTYN: Ken Wersted, would  
7 you bring us along on what's before us this  
8 evening, what needed to be addressed and how it's  
9 been addressed?

10 MR. WERSTED: One of the issues that we  
11 are trying to achieve with the project -- for the  
12 Members who are new, if you go out there today  
13 and drive down Noel Drive from the neighborhood  
14 and you look across the street at Gidney Avenue,  
15 the striping winds up aligning vehicles. It's  
16 kind of more of a head-on situation than to the  
17 opposing travel lanes that you would be going in.  
18 Simply the way the street is, it's slightly  
19 offset and the striping of Gidney Avenue flares  
20 out into a much wider intersection than Noel  
21 Drive.

22 So as the project originally came  
23 before us the last year or so, two years, the  
24 idea there was to move Noel Drive further to the  
25 north and that would help the alignment issue

1 across the street from Gidney Avenue. Obviously  
2 the project is under construction and an issue  
3 came up with the utility pole that is out there  
4 on the corner where the site is. The utility  
5 pole carries several lines in each direction. As  
6 an engineering point the applicant went and  
7 looked at modifying the design to basically avoid  
8 having to move or relocate that utility pole. In  
9 doing so they came up with some alternatives to  
10 the striping to still try and achieve the  
11 improvement of the alignment from Noel Drive  
12 across to Gidney Avenue, and that's what we've  
13 been working on the most recent month or two.

14  
15 Since our last submission we reviewed  
16 plans I think in early April and provided some  
17 comments. The striping was modified and we  
18 received plans last week which were reviewed as  
19 well. The plans still showed somewhat of an  
20 alignment where drivers coming out Noel Drive  
21 would kind of line up with drivers coming out  
22 Gidney Avenue. The past few days I worked with  
23 Tim O'Brien to modify the striping slightly on  
24 Noel Drive to help improve that alignment.  
25 So that's where we're at today in terms of the

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transportation end of it.

There were also some other minor modifications. Originally the crosswalk from the Orange County Trust site, which was an application before the Board simultaneously with the Sembler project, the crosswalk on that site was pushed back a little bit further. What we asked him to do was try to bring that a little closer to the road so when someone is at the intersection turning right they have more visibility of a pedestrian crossing the street in that area. They did move that further down. There is the issue with the utility pole and a guidewire coming down, so they can't bring it all the way down to the intersection, otherwise pedestrians will be ducking under wire and hitting their heads and so forth. So those improvements have been made. I know Tim worked on the drawings as late as today just incorporating some of my comments from last Friday's comment letter. I believe that's all set.

Then there's some other issues incorporating with the Orange County site.

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2 There's some modifications on that corner.  
3 There's also, I believe, some modifications that  
4 are needed to the drainage on the corner here,  
5 the drainage structure, which I'm sure Tim can  
6 get more into with our consultants as well.

7 CHAIRMAN EWASUTYN: Okay. While I have  
8 you there, just for the update of the new  
9 Members, Walgreen's is contributing, Orange  
10 County Trust is contributing, Gardnertown Road  
11 Association. We talked earlier this evening as  
12 far as traffic improvements and shared cost as it  
13 related to the Route 300 corridor and in this  
14 particular area of Town we'll call it a  
15 bottleneck at the intersection of Gidney and  
16 Gardnertown Road. This was a very unique site  
17 plan with two site plans -- actually three site  
18 plans. In all the years that people like myself,  
19 Ken Mennerich, Joe Profaci and Frank Galli with  
20 the ZBA, this is probably what you call a perfect  
21 storm, in a beneficial way though, where we were  
22 able to get the cooperation of three developers,  
23 three projects to share in mitigating a traffic  
24 impact in the Town. So you couldn't ask for a  
25 more reasonable -- enough talking from me.



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Would you explain it?

MR. WERSTED: Sure. Just down the block here as you come past the gas station on the corner, you have McDonald's, you have -- another block down here you have the intersection of Gardnertown Road. If you take this road you'll come out on the back of the Town Hall here. If you head out towards Gidney Avenue you come to an intersection where you come down across an older bridge, a culvert structure and come up to a very wide intersection where Gardnertown Road meets Gidney Avenue. There's a short divided median in the center. Gidney Avenue travels along the curve around a hill. The issue there is we have a lot of traffic coming out of the City of Newburgh and also coming up Gardnertown Road. They're all meeting at a stop sign. There aren't any turn lanes. It's very difficult to get out of there. Just up the block on Gardnertown Road we have a townhouse project, which I don't recall the number of units but --

CHAIRMAN EWASUTYN: 104 was it?

MR. WERSTED: -- it's called Gardnertown

1 Commons. They originally came in and were tasked  
2 with improving the intersection. At the same  
3 time two other applications came forward, which  
4 was Orange County Trust and the Sembler project,  
5 which is the Walgreen's and a Key Bank. With  
6 those two projects before us as well, all three  
7 applicants were able to come to an agreement that  
8 they would share the cost of those improvements  
9 such that no one project would be bearing the  
10 brunt of the whole thing, but based on the  
11 proportion of traffic that each one of them would  
12 be contributing to the intersection, it equated  
13 to a participation amount and the improvements of  
14 that intersection. So that's how we have shared  
15 the cost of that improvement at that intersection  
16 between all the applications that we have present  
17 with us at this time.

18  
19 CHAIRMAN EWASUTYN: What are the  
20 improvements?

21 MR. WERSTED: The improvements include  
22 cutting back the hill to improve some sight  
23 distance, widening Gidney Avenue to provide a  
24 left-turn lane as you come out of the city so  
25 that cars can stack there and cars can continue

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2 coming around Gidney Avenue up to Route 32, and  
3 then also provide a traffic signal there such  
4 that vehicles coming out of Gardnertown Road will  
5 have an opportunity to turn on a green light  
6 versus coming up to a stop and waiting for  
7 traffic to provide a gap.

8 CHAIRMAN EWASUTYN: Thank you. At this  
9 point Tom DePuy is here who represents I believe  
10 Orange County Trust.

11 MR. DePUY: Yes.

12 CHAIRMAN EWASUTYN: And Tim O'Brien who  
13 worked on the site plan.

14 So you gentlemen, either one of you.

15 MR. O'BRIEN: With Tom's permission, we  
16 put together a plan that Ken had reviewed, and  
17 Ken just kind of gave a brief summary of it.  
18 What we did was we tried to -- if you see the  
19 shaded area here, that's widening of the current  
20 Noel Drive. Basically we kind of mirrored what  
21 was being widened on the Sembler project to the  
22 widening on their project. We kind of just  
23 shifted the design a little to kind of coordinate  
24 with Gidney Drive.

25 What was the issue is a utility pole

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2 right on the corner. That utility pole has I  
3 believe fiber optics on it. The cost of moving  
4 that pole I believe was in the neighborhood of a  
5 quarter million dollars. It has a guidewire.  
6 Additionally there's also a -- the traffic signal  
7 pole. So there's a lot going on on this corner.

8           What we did was, working with Tom and  
9 Orange County Trust, we just basically mirrored  
10 the widening that was previously proposed, put it  
11 on their side. I gave that plan to Tom to look  
12 at, he made some modifications. We combined that  
13 plan and gave it to Ken for his review. In Ken's  
14 letter that came out last Friday he asked that we  
15 narrow the eastbound lane on Noel Drive to twelve  
16 feet wide, which on this plan here it doesn't  
17 show it at twelve. I made that revision today, I  
18 e-mailed it to Ken for his review, and I believe  
19 he's okay with that.

20           Additionally, our traffic engineer,  
21 Phil Grealy with John Collins Engineers, he's  
22 taking this plan and he's coordinating with DOT  
23 on the change in our current permit. As I  
24 understand it , I talked with Phil today, they  
25 are going to look at it as more or less a field

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2 change with the Planning Board's -- when the  
3 Planning Board approves this with conditions,  
4 they're going to go out and meet on site with  
5 DOT, Phil Grealy, probably myself, a  
6 representative from Sembler and also probably Tom  
7 DePuy so we can discuss the revisions to the  
8 design.

9           What happened was as part of the  
10 original approval what we had was we installed a  
11 catch basin right here, which would have been on  
12 the corner of the previously proposed  
13 improvements. That catch basin will go in now  
14 but we're going to put a manhole and grate on top  
15 of it and connect to the twin catch basins that  
16 are existing out there today. Those catch basins  
17 will be right on the edge of the turn as we come  
18 through. What we're going to do is we're  
19 bringing our curb to abut to that catch basin and  
20 then start the curbing down further. We'll  
21 install a frame and grate over the top of it  
22 because it sets back a little beyond the curve  
23 line, and we believe that will address the issue.

24           Additionally, what we've also  
25 included in this plan is the dense screen

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2 improvements which were also part of the overall  
3 approval of this project, or the combined  
4 projects. As you recall, there was a drainage  
5 issue in this area also previously, and as part  
6 of the approval for both projects we had to agree  
7 to work together to come up with drainage  
8 improvements which were previously installed last  
9 fall. So this portion of the plan has already  
10 been done.

11 We're just here tonight to seek your  
12 approval for the change in Noel Drive.

13 CHAIRMAN EWASUTYN: Tom DePuy, would  
14 you like to add anything at this point?

15 MR. DePUY: No. We've coordinated with  
16 B&L Companies and it slides our curb line over  
17 about three or four feet. We can accommodate  
18 that on our site.

19 CHAIRMAN EWASUTYN: You made the  
20 presentation, Josh Beyer, last week or two weeks  
21 ago. Do you want to summarize for us?

22 MR. BEYER: I'll keep it short. I  
23 think Tim did a good job in explaining the  
24 improvements. Just to recap also, I don't know  
25 if you want to talk about the resolution changes

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2 also to deal with the phased nature of the  
3 project.

4 CHAIRMAN EWASUTYN: Let's do that.

5 MR. BEYER: Why don't I do that since  
6 we talked about this, the road improvements. If  
7 you remember, a couple weeks ago we talked about  
8 the phased nature of this project and the need  
9 for us to be able to relocate Key Bank from their  
10 existing branch into their new building prior to  
11 what we've been calling the phase II work being  
12 complete. I believe Mr. Donnelly has drafted a  
13 resolution, which I read this evening, that  
14 addresses that, but the improvement that Tim just  
15 talked about, which is here on Noel Drive, is  
16 shown in what is phase II of the project. As we  
17 talked about a couple weeks ago, there are  
18 reasons for that. The biggest one obviously is  
19 because of the existing operation of Key Bank and  
20 traffic associated with that branch and  
21 operation, it makes it difficult to do those  
22 improvements while all that is happening. This  
23 building obviously needs to be demolished before  
24 we can do the improvements in phase II. So  
25 again, this site plan, SP-1, is by and large the

1 same plan that was approved with the original  
2 resolution. We're holding it up here for  
3 reference again so we can clearly identify what  
4 is in phase I and what is in phase II. For the  
5 most part it's what is currently out there, what  
6 you see today, the existing Key Bank and the  
7 building that was formerly the liquor store next  
8 to it, and the surrounding pavement around that  
9 is what is phase II, in addition to the  
10 improvement that Tim just explained.

11  
12 In a nutshell that's what we're here  
13 seeking approval for this evening, site plan  
14 amendment and the amendment to the resolution.

15 CHAIRMAN EWASUTYN: Pat Hines, Drainage  
16 Consultant.

17 MR. HINES: The only thing I have is  
18 they did a minor change, which we had previously  
19 approved as a field change on the project working  
20 with Tim O'Brien. They changed the proprietary  
21 product they were using for some water quality  
22 improvements on there which ties directly into  
23 that catch basin. I just wanted to bring that up  
24 to the Board. It's been installed and my office  
25 looked at it, it was fine. It's just another



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change we wanted to note there.

MR. DONNELLY: Is it now in the plans?

MR. O'BRIEN: Yes. It's in the submission I e-mailed to everybody last week. What happened was when the project started, DEC was kind of still in the mode of changing their stormwater requirements. What they did was they added another chapter which allowed for redevelopment of projects. What that allowed is they gave credit to projects for, you know, what was on site versus what's being proposed. What happened is we had previously proposed a large sand filter. Because of that new chapter that DEC put into their stormwater manual, it allowed us to put in a much smaller unit which is easier to maintain and operate. It's very similar to an oil brick separator. It's a CDS unit. Basically it's going to be installed in a very similar location as the sand filter. Basically we forwarded Pat some information awhile ago just so he can review it. He reviewed it and he was okay with it. As part of this application or this amendment, Pat thought it would be best to also bring it to the Board's attention.

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CHAIRMAN EWASUTYN: Jerry Canfield, Code Compliance, do you have any outstanding items?

MR. CANFIELD: I have nothing on the realignment.

I do have a question, though. Will we see -- perhaps this is for Tom. Will we see another revised site plan then including these improvements other than just the amendment to the traffic and the off-site improvements?

MR. DePUY: My plans, we were just getting ready to submit it for signature. I was going to reflect these changes on our set of plans. We were getting ready to submit.

MR. CANFIELD: That's just a question, if that's acceptable to the Board.

CHAIRMAN EWASUTYN: Is it acceptable to you?

MR. CANFIELD: I don't have an issue with it, no.

CHAIRMAN EWASUTYN: Is it acceptable to the Board?

MR. GALLI: Yes.

MR. BROWNE: Fine.

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MR. MENNERICH: Yes.

MR. PROFACI: Yes.

MR. FOGARTY: Yes.

MR. WARD: Yes.

CHAIRMAN EWASUTYN: If you feel the Town is well served, then of course it's always acceptable to the Board.

MR. CANFIELD: Okay. Thank you.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: I have no comments.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: No comments.

CHAIRMAN EWASUTYN: Ken Wersted?

MR. WERSTED: Nothing further.

CHAIRMAN EWASUTYN: Okay. Mike, do you want to give us conditions for approval for the amended site plan?

Gentlemen, you're with --

MR. FLACK: Stan Flack, I'm with Sembler.

MR. DONNELLY: You'll remember, and for the benefit of the new Members I know we talked about it two weeks ago, these are interlocking

1  
2 approvals. While we are changing aspects that  
3 relate primarily to the Sembler site, there are,  
4 as Tom DePuy just said, certain changes to the  
5 Orange County Trust site as well.

6 I will note that Orange County Trust  
7 representatives have sent a letter to you. They  
8 do say they consent to these changes. They do  
9 understand that they're jointly responsible for  
10 the off-site improvements, and they wish this to  
11 move forward in this amended fashion.

12 I think the easiest way to look at  
13 this, and it's consistent with your comment  
14 Jerry, is there's really three sets of plans  
15 here. There's the Orange County Trust site plan,  
16 and Tom is going to make some modifications to  
17 that, and I think Ken mentioned them earlier so  
18 he'll need to sign off to make sure those are  
19 correct. There's the Sembler site plan which is  
20 actually broken into two phases. And then there  
21 is what we called in the original resolution the  
22 joint construction phasing plan which is  
23 essentially the various off-site improvements  
24 that need to be made.

25 In the original resolution what you had

1  
2 said is all of the improvements shown on the  
3 Orange County Trust site plan, the Sembler site  
4 plan and the joint construction phasing off-site  
5 improvement plan had to be made before any CO,  
6 and we simply carved out the ability for Key Bank  
7 to leave up its other building until the CO was  
8 issued on the new one so that those minimal  
9 improvements didn't have to be done.

10 We're shifting gears now and the  
11 request has been, and you were inclined to grant  
12 it at your last meeting, to actually allow the  
13 Key Bank building to get its certificate of  
14 occupancy before any of the improvements are done  
15 other than those that are on its own site plan  
16 and can be accomplished before removal of the  
17 other building. But no other certificates of  
18 occupancy can be issued, either of the Sembler or  
19 the Orange County Trust site, until all of the  
20 improvements on the Sembler site plan, phase I  
21 and II, the Orange County Trust site plan and the  
22 off-site joint construction phasing plan are  
23 done. That's the concept.

24 I've prepared a resolution that I think  
25 has done that. I did send it to both Tom DePuy's

1 office and Josh's office today. We'll, as we  
2 usually do, track the conditions of the earlier  
3 resolution. I will add a condition that requires  
4 a sign-off letter from Ken Wersted. It's crucial  
5 to me that somebody get me the tables of the  
6 updated site plans and the sheets with the  
7 revision dates so we don't have any confusion,  
8 and Tilford and Jerry's office. If you could  
9 send them to me, you know, as an Excel  
10 spreadsheet or something. You've seen the  
11 resolution. I just need all that updated, send  
12 that to me and I can phase it in.

14 Therefore the first condition after the  
15 sign off will be as follows: Except as hereby  
16 amended, all conditions attached to, and I'm  
17 reading now from the Sembler resolution, to the  
18 original granted site plan and to the first  
19 amended site plan approval, because Sembler  
20 already had one amendment, are to remain in  
21 effect, and this approval is subject to and  
22 conditioned upon satisfaction of same as if those  
23 conditions were set forth herein. And then I  
24 don't change anything else in the old resolution  
25 except one piece down lower which simply says if

1  
2 the financial security or inspection fees need to  
3 be adjusted as a result of these change, then the  
4 Town Board will have to readjust those. I don't  
5 think that's going to come into play.

6 The important provisions then that  
7 relate to this amendment are as follows, and this  
8 will be condition either 2 or 3 depending upon  
9 the sequence: In the Sembler resolution we say  
10 construction of this project must be coordinated  
11 with construction of adjoining property, and I'll  
12 put Orange County Trust company in parenthesis.  
13 Revised joint construction phasing plans  
14 coordinated with those of Orange County Trust  
15 must be submitted and approved by the Town  
16 Building Department before the site plan for  
17 either project is signed. I know we already have  
18 them but I want to make sure that Tilford has a  
19 chance to look at them. Then we say that all  
20 required site work identified on the joint  
21 construction phasing plan shall be completed to  
22 the satisfaction of the Town Engineer and Town  
23 Building Department before any certificate of  
24 occupancy is issued for a structure on either  
25 site. We then say notwithstanding the foregoing,

1  
2 a certificate of occupancy may be issued for the  
3 new Key Bank building only provided that all  
4 improvements required to be completed as shown on  
5 the phase I construction phasing plan have been  
6 satisfactorily completed, and provided further  
7 that the applicant has posted financial security  
8 to the satisfaction of the Town Board and the  
9 Town Attorney to ensure completion of all site  
10 improvements shown on the phase I construction  
11 phasing plan that cannot be completed until  
12 demolition of the existing Key Bank building as  
13 well as those shown in the joint construction  
14 phasing plan. I think all of that has been  
15 posted so it isn't an issue but I wanted to keep  
16 it in the resolution.

17 There's similar language in the Orange  
18 County Trust resolution, and the second condition  
19 is they simply acknowledge they will not be  
20 permitted to get a certificate of occupancy for  
21 the building on their site until all of those  
22 approvals on the three sets of plans are  
23 completed. I think that carries forth what the  
24 applicant wants, what the Board discussed at the  
25 last meeting, and will allow Key Bank to get its



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CO provided that the phase I Sembler plan improvements are made, and then nobody else gets a CO until everything else is complete.

CHAIRMAN EWASUTYN: Josh, do you have any questions?

MR. BEYER: My only thing is I just wanted to point out so it's very clear in the resolution, I would ask Tim to rename the OS-1 sheet to joint construction phasing plan so it's very clear as to what plan we're talking about.

MR. DONNELLY: Very good. Thank you.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff?

MR BROWNE: I'm good.

MR. FOGARTY: I just have one question about where Noel Drive meets Gardnertown Road. You go across and then there's a tremendous dip as you go across onto Noel Drive from Gardnertown Road. I didn't know if anything was being done with that.

MR. O'BRIEN: We are resurfacing Noel Drive. It should improve that condition, however

1  
2 that condition will likely still exist because  
3 what happens there is as you cross over the State  
4 highway, the State highway actually has quite  
5 a --

6 MR. FOGARTY: It does.

7 MR. O'BRIEN: -- kind of a knob to it.  
8 The problem is these two drainage flights right  
9 here, they're basically right at the surface.  
10 That knob is basically right under the traffic  
11 signals. What we've done is we improved this.  
12 The problem is -- the best thing to do is  
13 actually to work in the State right-of-way to get  
14 rid of that knob so to speak. The problem is the  
15 utilities that are out there, including the water  
16 lines, storm lines. However, we are improving  
17 the intersection a little. We were actually  
18 talking about it earlier. We also look at it as  
19 kind of like a traffic cop. It will prevent  
20 people from racing through there.

21 MR. FOGARTY: It's a speed bump.

22 MR. O'BRIEN: There is a plus to it I'm  
23 trying to say.

24 MR. BEYER: Everybody has to have a  
25 Duke's of Hazard jump in their town.

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CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comment.

CHAIRMAN EWASUTYN: Any additional comments from our Consultants?

(No response.)

CHAIRMAN EWASUTYN: Mike, I have one question. Tilford has to approve and sign off on these; correct?

MR. DONNELLY: I just wanted to make sure his office was comfortable with that.

CHAIRMAN EWASUTYN: Does that mean I need a sign off from Tilford prior to me signing the site plans that Tom DePuy mentioned that he will be submitting soon for Orange County Trust?

MR. DONNELLY: What ever level of formality you're comfortable with. If he tells you he's satisfied, that's good enough.

CHAIRMAN EWASUTYN: Then I'm going to leave that effort with you, Tom, to try -- work with Jerry Canfield.

MR. CANFIELD: I can coordinate that.

CHAIRMAN EWASUTYN: Once I get that, that will be part of Bryant's letter acknowledging the fact that I can sign the site

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plans.

MR. BEYER: Do you need new sets,  
Jerry?

MR. CANFIELD: Just one set.

MR. O'BRIEN: We delivered one set last week. The only real change to -- well the submission that was made last week is the little striping change that I believe Ken is going to be reviewing. Otherwise that OS-1 sheet which we're going to rename, that really won't change because it's noted on that plan that the striping is a reference to my plan set.

MR. DONNELLY: We need the Orange County Trust revised site plan.

MR. O'BRIEN: Right.

CHAIRMAN EWASUTYN: Any further questions?

(No response.)

CHAIRMAN EWASUTYN: Having heard the conditions of approval from our Attorney, Mike Donnelly, for the amended site plan for the pharmacy and bank, I'll move for that motion for approval.

MR. PROFACI: So moved.

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MR. GALLI: Second.

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

(No response.)

CHAIRMAN EWASUTYN: If there's no discussion at this point, then I'll move for a roll call vote for approval starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Thank you.

MR. BEYER: Thank you very much.

MR. O'BRIEN: Thank you.

(Time noted: 8:47 p.m.)

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

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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.  
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23 DATED: June 2, 2009  
24  
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STATE OF NEW YORK : COUNTY OF ORANGE  
TOWN OF NEWBURGH PLANNING BOARD

----- X

In the Matter of

THE MARKETPLACE  
(2004-54)

Modification of Site Plan Approval

----- X

BOARD BUSINESS

Date: May 21, 2009  
Time: 8:47 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JOHN BAINLARDI

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

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MS. HAINES: Next is The Marketplace. We received a letter from John Bainlardi dated May 11, 2009 regarding the modification of the site plan approval to permit construction and occupancy of up to 400,000 square feet of stores to be served with two access drives. In response to that we received a letter from Ken Wersted dated May 13, '09 requesting that the applicant's traffic engineer begin preparing a traffic volume comparison for each movement of the two proposed access points.

CHAIRMAN EWASUTYN: Ken, can we have John first give his presentation?

MR. WERSTED: Sure.

MR. BAINLARDI: John Bainlardi, Wilder, Balter Partners. I'm the development manager for the project.

I did notice earlier this evening Adrian Goddard was speaking to your Board on behalf of his project up the street. Adrian also is as familiar as anyone with our project as well.

Of course what's happened in recent months with the economy downturn is that we've



1  
2 been finding it difficult to complete enough  
3 volume of deals in order to be able to proceed  
4 and secure the financing that would be necessary  
5 to construct the project in its entirety at this  
6 time. So what we're searching for is a way to be  
7 able to proceed with the project in the near  
8 term, lease up a significant portion of the  
9 project that will make economic sense to proceed,  
10 and at the same time give the tenants a comfort  
11 level that we will be able to be successful and  
12 proceed in the near term with the project.

13 One of the difficulties that we've been  
14 struggling with is we still have continued  
15 interest from good quality tenants but the  
16 question is how are you financing a 775,000  
17 square foot project in this environment where  
18 many of the sources of financing that were  
19 available in the past just no longer exist. A  
20 lot of the money that was coming out of Wall  
21 Street through commercial backed securities, the  
22 insurance companies, is just not being made  
23 available, and it may not ever come back in the  
24 way it existed for a period of time. We are  
25 seeing that there is regional lending out there

1  
2 from regional banks but no one bank necessarily  
3 may be willing to come in and finance the  
4 project. They may need to share the burden so to  
5 speak, or the obligation, amongst several  
6 tenants.

7 We believe that a 400,000 square foot  
8 or so project is feasible realistically in near  
9 term, the next six months or so, if we can reduce  
10 some of the overall construction costs,  
11 particularly with respect to the site work, so  
12 that we can feasibly have a project that we can  
13 proceed with. We feel we can lease up a  
14 significant portion of that 400,000 square feet  
15 so we can secure the financing.

16 Going back six months, a year or so ago  
17 you could go into a project and if you had a  
18 couple of very solid anchor tenants, some smaller  
19 lease-up activity, you could get the ball rolling  
20 and you could secure commitments from lenders to  
21 finance the project. Maybe it was a  
22 forty-percent lease ratio, maybe it was a fifty-  
23 percent lease ratio. What we're finding now is  
24 you need a minimum of seventy-five percent,  
25 eighty percent, ninety percent depending upon the

1 size of the project in order to be able to get  
2 any lenders to be able to consider financing.  
3 Even accomplishing that level of leasing of the  
4 project, there's still a lot of hurdles to  
5 overcome to secure that financing. It's a lot  
6 more difficult than it was before.  
7

8 In any event, what we would like to be  
9 able to do is proceed with the project  
10 substantially as or wholly as it exists and it  
11 has been approved from a building layout and from  
12 an infrastructure layout. We would like to have  
13 the ability to lease up to 400,000 square feet  
14 and proceed with the two entrances and delay or  
15 defer the construction of the third entrance way  
16 out to Route 52 at Exit 8. This is a long  
17 driveway. There's a lot of costs associated with  
18 the construction of this roadway. There's the  
19 Quassaic Creek crossing which is a considerable  
20 expense. We feel that if we can secure about  
21 400,000 square feet, that will enable us to  
22 proceed as otherwise approved and agreed, and we  
23 would complete all of the improvements and the  
24 Route 52 roundabout, the access drive to the  
25 intersection, the Route 300 improvements with all

1 the signalizations, and we would like to be able  
2 to have a little bit of flexibility so that if we  
3 have -- for instance, let's say we had a  
4 department store or a supermarket who says we  
5 really would like to be here in building C, we'd  
6 like to have the flexibility to accommodate that  
7 tenant and construct building C. Our preference  
8 would be to try to include -- try to tenant this  
9 portion of the project, everything, I would say,  
10 that's on the Union Avenue side of the interior  
11 ring road, to the greatest extent practical.  
12 That would allow us to then stay off this hill  
13 and not have to make improvements on this part of  
14 the site where you have a lot of improvements  
15 from a parking lot standpoint and other  
16 infrastructure. Because of the way the  
17 infrastructure is laid out, and Pat can expand on  
18 this, there are some things that we have to do  
19 because we have certain rock movements. If  
20 you're cutting here you need to be able to fill  
21 here and you have infrastructure that's designed  
22 to be in the ground, and if you're going to get  
23 water lines and sewage lines through the project  
24 you're going to need to do certain things, you  
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just can't avoid it.

Having said all that, we feel that if we can get this phasing change to allow us to proceed with this matter, we'll have a reasonable opportunity to proceed in the near term.

CHAIRMAN EWASUTYN: Ken Wersted, you made comparisons on the SEQRA Findings.

MR. WERSTED: Yup. In terms of the comparison of the full development being approximately 775,000 square feet versus the 400,000 square feet would basically encompass just on a square footage side, John can speak to what buildings could actually be built, but square footage wise it would be approximately the same size as the lifestyle center, buildings A, B, the smaller building 2 and building 1. So essentially all of this site down here is the approximate square footage of 400,000 square feet.

As we went through the SEQRA process and the traffic analysis, some of the Findings were that with a single access point coming off of Route 300, approximately 450,000 square feet could be developed. So that would include

1  
2 basically this whole area down here and say half  
3 of building C, to give you a perspective. If  
4 they created another access which was the access  
5 of road A going out to Route 52 and Fifth Avenue,  
6 they could develop another 250,000 square feet,  
7 which would be approximately the remainder of  
8 buildings C and D, and then with the third and  
9 final access they could balance out the site,  
10 which is approximately the remainder of building  
11 E.

12 The proposal as approved in terms of  
13 that phasing anticipated building out the Route  
14 300 access and then the Route 52/Fifth Avenue  
15 access followed by the Powder Hill --

16 MR. GALLI: Powder Mill.

17 MR. WERSTED: Powder Mill, Meadow Hill  
18 Road or Meadow Avenue intersection. The  
19 improvements here at the intersection would be  
20 constructed in I think phase I or II but the  
21 roadway actually going up to it wouldn't have  
22 been constructed until, you know, one of the  
23 later phases I believe.

24 So the proposal right now is to  
25 construct Route 300 and construct the Powder Mill

1 road access and build out, you know, the  
2 approximately 400,000 square feet, which is  
3 approximately the southern side of the site.  
4

5 Looking through the traffic analysis  
6 and what's being proposed now, at first glance my  
7 instinct said that the 400,000 square feet and  
8 two access points is going to be, you know, more  
9 than enough. The only hang up was the issue of  
10 having this access come out towards Exit 8 versus  
11 having the second access here being constructed  
12 at different times. Even with 400,000 square  
13 feet and the access coming out to Fifth Avenue,  
14 traffic from Exit 8 would then come in this  
15 driveway and use the facility, and under the  
16 proposed plan that traffic wouldn't be doing that  
17 now, it would come up Route 52 and turn in at the  
18 roundabout. So even with the smaller square  
19 footage size, that could mean a heavier traffic  
20 volume making this left turn into the site under  
21 this interim proposal.

22 So what we requested is that, and I  
23 spoke to Phil Grealy earlier this week about, was  
24 taking a look at the traffic volume comparison of  
25 what was analyzed with the whole development and

1 three access points versus the reduced  
2 development size and only these two access  
3 points. If the traffic volumes at the roundabout  
4 and at Route 300 are comparable, then the  
5 development of the 400,000 square feet will have  
6 been covered in the analysis that we've already  
7 prepared and approved through SEQRA. If there  
8 are differences, particularly if any of the  
9 movements are higher, than it could have slightly  
10 different traffic results and we'd have to  
11 confirm at that point whether the proposed  
12 mitigation is adequate to accommodate this  
13 interim solution or if there's additional or  
14 different mitigation. So as a starting point  
15 they would have to provide us with that  
16 comparison, and then we could go from there in  
17 determining whether the analysis that's already  
18 been completed covers this interim process.

19  
20 CHAIRMAN EWASUTYN: Before I turn to  
21 the Board Members or Consultants, I'm going to  
22 turn to Mike Donnelly, Planning Board Attorney,  
23 to think through the presentation that was given,  
24 which I'm sure he listened to, by both parties,  
25 Mike, and the Findings Statement, the SEQRA issue



1  
2 and what it may trigger or what it may not  
3 trigger.

4 MR. DONNELLY: We would need to go back  
5 to the traffic part of the EIS, go through the  
6 Findings Statement, and the after study to make  
7 sure this all works. There was some discussion,  
8 I brought up the resolution, there was some  
9 allowance that if the access to Meadow Avenue/  
10 Powder Mill Road couldn't be built there was a  
11 limitation then on how much square footage could  
12 be built with only the other two access points.  
13 So we took the same approach at an earlier time.  
14 The first task is to get the data that Ken needs,  
15 compare it against the EIS and the Findings. If  
16 the EIS needs to be supplemented by that study,  
17 then we'll determine what level of formality is  
18 appropriate, and then we'll of course need to  
19 adjust the Findings to allow for this amendment.  
20 Then obviously we'll have to consider a  
21 resolution with the appropriate limitations on  
22 how to allow this to happen if indeed it can be  
23 supported. The first step is what I think Ken  
24 has said, and that is an updated traffic  
25 analysis.

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CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: Just one issue I had to disagree with Ken on. I think that people that are coming up 84 aren't going to get off at 52. They're going to continue on and get off at Union Avenue because they know that's a more direct and easier route. I live in the area and my wife is a shopper, so I know any time she shops she shops on 84. She doesn't go the back roads or anything like that. Anybody going north is going to come Union Avenue. Anybody coming south will get on 84. Anybody on the other end of Town is going to come up Gardnertown Road, Powder Mill Road and cut down the intersection and get on there. That's my own personal opinion by living in the area such a long time. I don't think -- I think they're going to use the other two entrances a lot more than they would use the Route 52 and 84 entrance. I mean if it's there they'll probably use it but if not they'll use the 84 and Powder Mill Road. I think the Powder Mill Road intersection needs more of an upgrade than opening up the 52 intersection. Personally I

1  
2 would rather see the Powder Mill intersection  
3 constructed and used and the Union Avenue  
4 entrance used if we were going to go with two  
5 entrance points.

6 CHAIRMAN EWASUTYN: Cliff Browne?

7 MR. BROWNE: I have a couple concerns.  
8 One is following up on Frank's comment. I was  
9 thinking along the same line but I would want to  
10 not see any signs on 84 or anyplace else  
11 indicating there's an entrance there coming off  
12 84.

13 MR. BAINLARDI: There are no signs  
14 proposed.

15 MR. BROWNE: Okay. Again, I don't  
16 think that that is really geared to handle that  
17 kind of volume that we're thinking might happen  
18 from the exit on 52 up to the Powder Mill Road  
19 interchange.

20 Along with that -- not along with that  
21 but another comment was I would want to see -- I  
22 know that you said you want to be flexible as far  
23 as what would be built, but I think from a long  
24 term we have to look at it and say it may never  
25 be built. So we have to understand what could be

1 done, what will be done and how the property that  
2 isn't being built out will be mitigated because a  
3 lot of the property is going to be cut to fill  
4 where you're going to be building. I have to  
5 understand how that all is going to work. We  
6 have to make the assumption it's going to happen.  
7 I think we understand how that is planned to  
8 work.

9  
10 CHAIRMAN EWASUTYN: Ken Mennerich?

11 MR. MENNERICH: I travel that section  
12 of Route 52 quite often and I have to agree  
13 completely with Frank. The 30 mile-an-hour speed  
14 limit on Route 52 will be a deterrent. People  
15 will stay on 84. Even the GPS that I use in my  
16 car always routes you up to Route 300 when you're  
17 coming across 84 in either direction. If I'm  
18 coming down 52 it will take me up Route 300 to  
19 84. I think that's the pattern the traffic will  
20 take. I even wonder, you know, with the third  
21 entrance coming into Fifth Avenue, how much that  
22 would actually get used if people have a direct  
23 route coming up 84 and getting on 300 and getting  
24 in. I think they would use it if there's  
25 congestion where they can't get in from 84 but I

1  
2 really think that most people would use 84 and  
3 300. The people that live in the northwest  
4 section of Town may come in here, but even some  
5 of them would go up 300 to get in depending on  
6 what part of The Marketplace they wanted to get  
7 to. So I guess my -- I don't think  
8 there's a need for an additional study on the  
9 traffic.

10 MR. BAINLARDI: May I add something at  
11 this point? Just in first thinking about what it  
12 was that we wanted to ask for, I went back and I  
13 looked at the traffic study that was in the  
14 F.E.I.S., and in the F.E.I.S. there was a study  
15 of a project that would only be serviced by the  
16 Route 300 access point and no other access point.  
17 In the F.E.I.S. there's a level of service table  
18 and analysis, and it came to the conclusion that  
19 a Route 300 access point only with no other  
20 access points could service 450,000 square feet.  
21 So I said well maybe we should ask for that.  
22 Then they said in thinking about how the project  
23 progressed and knowing that it was important to  
24 the Town to have this roundabout improvement and  
25 ultimately having the access going through from

1  
2 Route 52 through the center, that that was an  
3 important component of the project from the  
4 viewpoint of the Town. So we then said all  
5 right, let's reduce the 450,000 square feet down  
6 a little bit so we have a little bit more wiggle  
7 room there, there will be more of a cushion, and  
8 we would get two access points and that should  
9 more than -- be more than adequate to serve the  
10 400,000 square feet that we're requesting.

11 I don't know, Ken, whether or not you  
12 reviewed that summary table that was in the  
13 F.E.I.S. The traffic analysis is not my  
14 expertise so I'll leave that to you and Phil. If  
15 you still believe that ultimately at the end of  
16 the day the additional information that you've  
17 requested from him is necessary, then we'll  
18 provide that. I just wanted to give, you know, a  
19 rationale for how we came to the request.

20 CHAIRMAN EWASUTYN: Frank Galli?

21 MR. GALLI: I have a couple more  
22 questions. Cliff Browne just whispered in my ear  
23 about the emergency services. I was going to  
24 tell him the emergency services are all right off  
25 Powder Mill Road. The fire district, they would

1  
2 be right there if we had to respond. And the  
3 ambulance corp is right down the road. If we had  
4 to respond we'd come up 84 anyway and get to the  
5 scene.

6 The second thing is the traffic  
7 analysis. If we did have to set up another one  
8 would it be taken after the new intersection,  
9 interchange is open, because traffic is going to  
10 be reduced drastically on 300 when that new  
11 interchange opens? It's going to take all the  
12 traffic off there that goes on the Thruway. The  
13 way the interchange is set up now, I think it's  
14 reduced traffic a little bit now. I think once  
15 they open it up, I think the traffic analysis is  
16 going to be better, more in favor of The  
17 Marketplace I think as far as less traffic  
18 getting off 300. I don't know if it's feasible  
19 to do the study before it opens or after it  
20 opens.

21 CHAIRMAN EWASUTYN: Again, we'll always  
22 seek the advice of Ken Wersted, but I want to now  
23 go back to Mike Donnelly as far as the other  
24 point that we want to do, and that is to  
25 establish a record of fact based upon what we're

1  
2 doing so there's that balancing and a hard look  
3 establishing a record of fact so as we go back  
4 and forth --

5 MR. DONNELLY: I'm not as familiar with  
6 what John just talked about but it sounds like  
7 some part of the analysis might have been done.

8 Frank, in response to your issue, I  
9 think we'd be better off analyzing it under the  
10 current worst case, and if it works there let's  
11 not guess as to how much better it will be. We  
12 all believe that it will be. That's based upon  
13 what's there now. I don't know that Ken was  
14 suggesting any new counts as much as an analysis.  
15 And Frank, it can be tweaked with what I think  
16 Ken would call a sensitivity analysis if we  
17 change the assumptions as to usage. Why don't we  
18 look at all of those sensitivity analyses in the  
19 worst-case scenario manner and look at an  
20 assumption that very few people will use --

21 MR. GALLI: 52.

22 MR. DONNELLY: -- the 52 way in and the  
23 vast majority will use 300. Some of the work  
24 John tells us has been done already. Using the  
25 400,000 square feet, let's see what's going to



1  
2 happen. It's a desk exercise more than a count  
3 exercise if I understood Ken correctly.

4 MR. WERSTED: I'd agree with Mike.

5 MR. DONNELLY: On the other points,  
6 right now traffic that wants to go to the Thruway  
7 has to come off Route 300, turn left, head south,  
8 pick up the Thruway exit. So you have traffic on  
9 300 that probably over the next couple of years  
10 will be moving off of 300 and will be moving  
11 directly to the Thruway without getting onto 300.  
12 So in that respect it will improve things in  
13 favor of The Marketplace in this area.

14 To the point of, you know, Frank's and  
15 Cliff's observations of driving in the area, if  
16 you were on Route 84 would you come off of Exit  
17 8, come up 52 and then come back down into the  
18 site versus staying on 84 and coming into the  
19 site from this direction? Probably not. You'll  
20 probably stay on 84 and get off at Exit 7.

21 And then to John's point and Mike's  
22 point is that this question hasn't been asked as  
23 part of the SEQRA record. A different question  
24 was asked. We've analyzed in terms of looking at  
25 Route 300 and looking at only Route 52 and Fifth

1 Avenue. So I think with the information that we  
2 have in the document, we have a certain  
3 reasonable comfortness that there isn't  
4 necessarily going to be an issue with this  
5 current question but to have it documented, have  
6 the letter in there that says -- confirms that it  
7 won't be an issue. I think that's the point of  
8 the exercise that I'm speaking to. It's not  
9 going to involve going out and doing any new  
10 traffic counts, it's basically looking at the  
11 information we already have, readjusting what  
12 that distribution might be, these two entrances  
13 were proposed and comparing it to what has been  
14 analyzed. So it's very much a desk exercise, if  
15 you will, to respond to that -- respond to the  
16 proposal that's being provided.

17  
18 CHAIRMAN EWASUTYN: Joe Profaci?

19 MR. PROFACI: I agree a hundred percent  
20 with what Frank and Ken are saying. I don't  
21 think anybody would exit 52. There are certain  
22 times of the day where you have to wait to get  
23 through because of the light at Powder Mill Road.  
24 As long as it is, as you say, a desk exercise and  
25 we don't have to do new counts, that's fine. I'm

1  
2 totally in favor of doing it in phases with the  
3 400,000. It appears as though those two  
4 entrances will cover that.

5 CHAIRMAN EWASUTYN: Tom Fogarty?

6 MR. FOGARTY: I agree with Joe.

7 I have one question. I read some of  
8 these materials. They talk about 450,000 feet  
9 and now you're talking 400,000. Has the project  
10 been reduced to 400,000?

11 MR. BAINLARDI: It's not our intention  
12 to reduce the project. Our intention is to  
13 construct the project in its entirety as leasing  
14 demand dictates. Really our intention right now  
15 is how do we create a project that's viable, that  
16 we can lease, finance today or in the reasonable  
17 foreseeable future so that we can get in there,  
18 we can get started, we can get the site work  
19 started, we can get job creation going and all  
20 the other things.

21 MR. FOGARTY: Within this 400,000, I  
22 don't know if you can answer this, will that  
23 include the anchors?

24 MR. BAINLARDI: Hopefully, yes. I mean  
25 we're at a point in time with the anchors where

1                   -- with many of these tenants what happened is  
2                   they're all having their own issues. Some are in  
3                   better situations than others. Frankly,  
4                   fortunately for us, we're dealing with some of  
5                   the better quality tenants. We're not dealing  
6                   with the Circuit Cities, we're dealing with the  
7                   Best Buys and we're dealing with the Costcos,  
8                   which are fairing reasonably or relatively well  
9                   in this economy. But they're not foolish,  
10                  either. They know what we're up against. As I  
11                  think Adrian had said before, they will say yeah,  
12                  we want to be in the market, we really like the  
13                  market, we think it's a great long-term prospect  
14                  with the market, but not at this number. So it's  
15                  kind of a wait and see game at this point. We're  
16                  going to have to make concessions, it's just, you  
17                  know, how big are the concessions. At certain  
18                  points you can't make the concessions that  
19                  they're asking for at this point in time. So I  
20                  think we're starting to see some rays of light  
21                  out there as the economy starts to improve and  
22                  people start to get a little more confidence, you  
23                  know, things will start to loosen up. These  
24                  tenants who are out there who liked the market  
25

1 before are going to continue to like the market  
2 in my opinion. I think that the long-term  
3 prospects for this particular market are very  
4 very good. You have an improving demographic,  
5 strong demographic, and with the tenants and the  
6 businesses that have come here over the last five  
7 years who have been performing well, it's good  
8 for the market. The Marketplace in particular,  
9 it's been four years where we've been going out  
10 to the conventions and -- to the various  
11 conventions and speaking to hundreds of tenants  
12 trying to sell the market and explaining to, you  
13 know, somebody who may be in an office -- who is  
14 responsible for real estate for a national tenant  
15 who is in an office in Plano, Texas and when you  
16 say Newburgh, they don't really know Newburgh.  
17 At first they might think the City of Newburgh.  
18 You have to first explain this is a particular  
19 unique commercial property along this stretch and  
20 we're creating enough volume, critical mass to  
21 create our own. The Costcos will help to draw  
22 people in to the development, and that attracts  
23 other retailers. So it's a constant process of  
24 trying to educate some of these retailers.  
25

1  
2 Frankly, when you say Newburgh they think it's  
3 upstate New York, we're in the sticks. It's not  
4 the case necessarily, and, you know, we're within  
5 fifty miles of Manhattan and there's a lot of  
6 commerce going on. This is what we're trying to  
7 do.

8 CHAIRMAN EWASUTYN: Let John Ward  
9 comment and we'll bring this to a closing soon.

10 MR. WARD: The roundabout, is that one  
11 lane or two?

12 MR. WERSTED: I believe it's proposed  
13 as one lane.

14 MR. WARD: Basically I think it should  
15 be two.

16 Another thing, you're proposing  
17 possibly that road there, right, to go to the  
18 roundabout --

19 MR. WERSTED: (Indicating.)

20 MR. WARD: -- when you first talked?

21 MR. BAINLARDI: Yes.

22 MR. WARD: I think it's a good idea  
23 because whether they use it to go in and out, you  
24 don't need -- say everything goes forward,  
25 business goes on, and if you ever build future

1  
2 wise, emergency vehicles can go in there, we  
3 don't know if Black Friday comes, they have a way  
4 to get out. You don't need traffic problems with  
5 the new interchange. A lot of things. I think  
6 that should be an option to have.

7 MR. BAINLARDI: The roundabout?

8 MR. WARD: Yeah.

9 MR. BAINLARDI: That's what we're  
10 proposing.

11 MR. WARD: That's what I'm asking.

12 CHAIRMAN EWASUTYN: A lot of what you  
13 see here, John, has already been approved through  
14 the agencies and all. We're not in a position to  
15 redesign and amend it.

16 Ken?

17 MR. MENNERICH: As I hear the study  
18 described by Ken, it sounds reasonable. I guess  
19 what I would not want to see come out of the  
20 study is a new square footage that would be  
21 allowed with the two roads. If you're going to  
22 -- you know, if 400,000 is the number you want to  
23 see; if it will work, fine. Don't have the study  
24 based on this past data, come back and say really  
25 it's good for 600,000 feet, because that's not

1  
2 what we're being asked. I think if you want that  
3 then you have to do a detailed study again I  
4 would think.

5 MR. WERSTED: Already at this point  
6 we've gotten different analyses that have  
7 different numbers. We have it in the Findings  
8 Statement, you know, 450 from here and another  
9 250 from here and another final 150 from there.  
10 So I don't think we want to introduce another set  
11 of numbers and Findings that say if you do it  
12 this way you can have these numbers and if you do  
13 it that way you have these numbers.

14 CHAIRMAN EWASUTYN: Mike Donnelly,  
15 before I bring this to a close.

16 MR. DONNELLY: I just wanted to  
17 emphasize one thing that John Bainlardi said, and  
18 that is, if I understood him correctly, this is  
19 not a proposal for a phased site plan approval  
20 but rather an amendment to the phased  
21 construction plan. In other words, this still  
22 remains a single site plan without phases. The  
23 applicant is simply changing the order of the  
24 improvements that are needed to support certain  
25 levels of square footage, and the resolution has



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pieces like that in it already, it's just a modification to it.

CHAIRMAN EWASUTYN: Okay. I think you're here this evening to have the Board act to set this up for a consultants' work session to define some of these points more clearly. Correct?

MR. BAINLARDI: Yes, sir.

CHAIRMAN EWASUTYN: To help you with your case when you're in Texas and they say Newburgh, Newburgh, you can always identify it with the Dairy Queen.

MR. HINES: If it's going to come to a work session it would be helpful to know what the 400,000 square foot phase is. It would be helpful for me to know what kind of utility infrastructure is going to need to be installed, how you're going to build the lifestyle center.

MR. BAINLARDI: I could answer that question. I would like the 400,000 square feet to encompass this swath of -- I realize --

MR. HINES: Are you going to the lifestyle center on your left there? How big is that swath?

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MR. BAINLARDI: The lifestyle center is 165,000 square feet.

MR. HINES: Not on that map you're pointing to.

MR. BAINLARDI: Yeah, this here.

MR. CANFIELD: Is that everything?

MR. BAINLARDI: The lifestyle center is 165,000, this building is another 100,000, so we've got 265,000. Here's another 90,000. So you have 355 plus this building here is 30,000. So you're about 385. But, you know, keeping in mind that the main goal here is in order to be able to get a number of the tenants in who had previously committed, we need to get Costco back into the game. That's this building here. So I think any phase would probably include Costco.

MR. HINES: And that goes back to I think what was Cliff's question. The Costco site is the majority of your fill area there. So you need to obtain that material. That's the kind of thing we need to look at as we move forward.

MR. WERSTED: The question is in the resolution or in the Findings there's a certain amount of square feet that can be fill before the

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lifestyle center has to be completed.

CHAIRMAN EWASUTYN: Without a doubt. That was something we stayed away from realizing in order to attract retail tenants of 1,500 to 2,000 square feet they had to have the anchors to support that kind of lease arrangement. That was substantiated early on.

MR. HINES: That condition is going to remain, that the lifestyle center was plugged in at some square footage there.

MR. BAINLARDI: I think it's 450,000 square feet. It might have been 400,000 square feet. I don't recall with certainty. It's one of those two numbers. And that we could not construct or open any big box stores beyond 400,000 square feet until we had constructed a minimum of 100,000 square feet of lifestyle center.

MR. HINES: I don't have a problem with it. We need to approve a map for someone going out in the field saying this is going here. We're not there yet. I think we're going to head that way.

CHAIRMAN EWASUTYN: I'd like to move

1 forward now to set this up for a consultants'  
2 work session for the 26th of May and you can  
3 bring these points further. I think it benefits  
4 all. We had a good half an hour open discussion  
5 on that.  
6

7 I'll move for a motion to set this up  
8 for a consultants' work session for the 26th of  
9 May.

10 MR. GALLI: So moved.

11 MR. MENNERICH: Second.

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

15 (No response.)

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

18 MR. GALLI: Aye.

19 MR. BROWNE: Aye.

20 MR. MENNERICH: Aye.

21 MR. PROFACI: Aye.

22 MR. FOGARTY: Aye.

23 MR. WARD: Aye.

24 CHAIRMAN EWASUTYN: Myself yes. So  
25 carried.

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MR. BAINLARDI: Thank you very much.

(Time noted: 9:26 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.

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DATED: June 2, 2009

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

----- X  
In the Matter of

MILL CREEK LANDING

Letter from Gerald Canfield Re: Proposed Site Plan

----- X

BOARD BUSINESS

Date: May 21, 2009  
Time: 9:26 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

----- X

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

1  
2 MS. HAINES: The next item of Board  
3 Business is Mill Creek Landing. We received a  
4 letter from Jerry Canfield dated May 12, 2009  
5 regarding a proposed site plan for the Mill Creek  
6 Landing.

7 CHAIRMAN EWASUTYN: Jerry, do you want  
8 to bring us along? We'll spend a few minutes.

9 MR. CANFIELD: This is basically for  
10 information only. This application -- actually,  
11 it isn't an application before this Board yet.  
12 In the spirit of communicating amongst each  
13 other, which John is very well in doing, I've  
14 been asked by the Town Board to comment on a  
15 proposal that's before them for a zone change.  
16 In doing so, like I said, in the spirit of  
17 cooperation, I copied John, of course for your  
18 information as well.

19 This is the Mill Creek Golf Course  
20 located up on 9W in Middlehope. This proposal  
21 has been before the Town Board a few times  
22 already. It isn't anything new. Just as of  
23 recent I've been actually asked to comment on it.  
24 So at that point in time that's why I decided to  
25 copy your Board as well.

1  
2 This was the original proposal. What  
3 is before the Town Board right now is the  
4 applicant is requesting the Town Board to change  
5 the zoning in this area, which is currently a B  
6 zone. This is an adult facility for I believe  
7 approximately 211 townhouse type adult units.

8 There are some issues that are  
9 affiliated with the site that the applicant has  
10 to overcome in this market of course, which is  
11 the common thing anymore, and also financially  
12 what he's going to put into the site. The first  
13 and foremost is the project is not permitted in a  
14 B zone. He either has to get a variance or have  
15 the zone changed, which that's the route he's  
16 chose to go.

17 Just a quick overview. It consists of  
18 eight buildings, like I said totaling 211 units,  
19 adult housing in the back, and there are two  
20 buildings in the front, one a mixed retail with  
21 -- it's a typical taxpayer building, retail with  
22 apartments upstairs, a smaller building and a  
23 clubhouse. There had been some part of the  
24 proposal where they would keep a small portion of  
25 the golf course, like three holes or something of



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that sort.

Major issue with the site is obviously at that portion of the Town there is no municipal water, there is no municipal sewer. They appear to have proposed an on-site sewage treatment plant, and they're also proposing an elevated storage water tank with two wells to feed that.

Essentially the Board's request, the Town Board's request from my office was to give fire protection comments. Typically the Board, when they see these type proposals, fire protection, public safety is a foremost issue with them. So they requested let's get Jerry's comments and the fire department as well.

These buildings appear to be four story. They'll probably be in excess of forty-five to fifty feet in height, which may be an issue also. Of course that must go before the Zoning Board. There's a requirement even if they change the zone, there's still a thirty-five feet building height requirement. So again, that's part of the need why they wanted to know what the fire department's input was.

Basically my comments, which I copied

1  
2 John, was the fact of fire protection. Should  
3 they choose to go with the storage tank as  
4 opposed to extend the water main some 3,000 feet  
5 back to Post Road, it can be done either way if  
6 it's properly engineered. These buildings again  
7 will be required to be sprinklered, and there  
8 will also be a requirement for a series of water  
9 mains and hydrants. Based on the size of the  
10 tank, if it's done properly it can be done and  
11 meet code. Optimally I would rather see the  
12 water main extended but that presents other  
13 issues because of the length of the main, it's a  
14 dead end. I spoke with Pat briefly to see if the  
15 Town would be interested in an interconnection  
16 with Marlborough but there is nothing close  
17 enough to the site from Marlborough either. I  
18 don't believe that the Town -- our Town Engineer  
19 is very keen on extending the water main some  
20 3,000 feet. They said something about the water  
21 comes up 9W and goes down Post Road past Cedar  
22 Hill Cemetery and goes down into Dynergy, and  
23 that does provide a good portion of water to  
24 Dynergy for what Dynergy uses it for. Jim  
25 Osborne had hinted that extending this would

1  
2 somewhat interrupt the service that's provided to  
3 Dynergy. So that may be part of the reason.  
4 That was the original plans. Since then, which  
5 is a couple years ago, actually 5/7/2007 Greg  
6 Shaw was involved in it. I'm not certain if he's  
7 still involved in it. Most recently a new plan  
8 was submitted to the Town Board which is pretty  
9 much just an overlay, but there are some items of  
10 interest that pretty much bring us here.

11           Again, the same parcel, same tract,  
12 same building layout. I don't know if you can  
13 see it with this glossy paper. Everything pretty  
14 much is the same but with the addition of an  
15 entranceway looking into Mill House Road thus  
16 eliminating the need to use the bridge. And I  
17 believe that's perhaps somewhat of the Town's  
18 recommendation to the applicant. It makes better  
19 sense, it provides the site better accessibility  
20 as far as in and out, and it may improve this set  
21 up here right now with Mill House Road.

22           Like I said, as the original proposal,  
23 again still water storage tanks, sewage treatment  
24 plant.

25           There are other issues. There is a

1  
2 stream that runs north and south through the  
3 site. I believe it's Jew's Creek. It is a  
4 classified stream I believe, Pat. There are --

5 MR. HINES: No. It's not regulated.

6 MR. CANFIELD: There are a large area  
7 of flood plain issues affiliated with it, which  
8 are also some of their issues.

9 Again, the plan has -- it's pretty  
10 generic, it has no details, there is no  
11 engineering basically, no drainage or anything at  
12 this point. The applicant is just kind of  
13 feeling his way through it and initially looking  
14 for the Board to make a zone change for them to  
15 go to perhaps the next level.

16 CHAIRMAN EWASUTYN: Thank you. At this  
17 point it's just informational so we hear about  
18 it.

19 MR. CANFIELD: One point and one of our  
20 big concerns, and I'm sure Karen is looking at  
21 this, the parking is in the front and these are  
22 four-story buildings that are fifty feet. With  
23 the parking in the front and there's like a  
24 forty-five feet or a forty-foot grass area  
25 between the parking and the building, there's no

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way you can get a ladder truck there. The ladder truck has a limitation of a hundred feet. You're forty feet away from the building, the building is fifty feet high, it's not going to work. We had asked them to -- we just brought it to their attention. We really haven't asked anything because a site plan review really isn't done at this point. All right.

CHAIRMAN EWASUTYN: Okay.

(Time noted: 9:52 p.m.)

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

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

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DATED: June 2, 2009

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

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In the Matter of

QUARTERLY SITE INSPECTION

----- X

BOARD BUSINESS

Date: May 21, 2009  
Time: 9:52 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

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

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MS. HAINES: The last item is this year's first quarterly site inspection.

CHAIRMAN EWASUTYN: What that means is if everyone can sort of pick a month and then we'll do it on a Saturday. I would like to have for the next meeting Members come up with a Saturday that they think they would be available. The majority will rule. We'll go on a quarterly site inspection.

MR. GALLI: Who's driving?

CHAIRMAN EWASUTYN: At this point either John or Tom. They're the new guys. I'll drive. What I'll do is I'll drive and I'll show you where the Dairy Queen is --

MR. FOGARTY: That's the first stop.

CHAIRMAN EWASUTYN: -- in case you go to Texas.

I'll move for a motion to -- we'll try for June, so by next week you can comment. Our next meeting, which is June 4th.

I'll move for a motion to close the Planning Board meeting of the 21st.

MR. GALLI: So moved.

MR. PROFACI: Second.



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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

(Time noted: 9:36 p.m.)

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