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

----- X

In the Matter of

O'BRIEN LANE II
(2010-17)

O'Brien Lane off of Pressler Road
Section 6; Block 1; Lot 9.26
AR Zone

----- X

PUBLIC HEARING
THREE-LOT SUBDIVISION

Date: September 16, 2010
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: CHARLES BROWN

----- X

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

1
2 MR. BROWNE: Good evening, ladies and
3 gentlemen. Welcome to the Town of Newburgh
4 Planning Board meeting of September 16, 2010.

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

8 MR. GALLI: Present.

9 MR. BROWNE: Present.

10 MR. MENNERICH: Present.

11 CHAIRMAN EWASUTYN: Present.

12 MR. PROFACI: Here.

13 MR. FOGARTY: Here.

14 MR. WARD: Present.

15 MR. BROWNE: The Planning Board has
16 professional experts that provide reviews and
17 input on the business before us, including SEQRA
18 determinations as well as code and planning
19 detail. I'd ask them to introduce themselves at
20 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.

MS. ARENT: Karen Arent, Landscape
Architect.

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

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

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

(Pledge of Allegiance.)

MR. PROFACI: Please turn off your
electronic devices. Thank you.

MR. BROWNE: Thank you. The first item
of business we have this evening is a public
hearing. Before we start that, I'll ask Mike
Donnelly to go over, briefly, what the public
hearing is about, the process.

MR. DONNELLY: Certain applications
that come before the Board are required to have a
public hearing. One type of application that does

1
2 are subdivisions. Tonight we have a subdivision
3 application on the agenda, and it's scheduled for
4 a public hearing. After the applicant gives its
5 presentation, the Chairman will ask if any
6 members of the public wish to address the Board.
7 If you do, please raise your hand and the Chair
8 will recognize you, and you can direct your
9 comments to the Board. If you have questions of
10 a simple nature, the Chairman will ask one of the
11 Town's consultants or the applicant's
12 representatives to answer them.

13 The purpose of the hearing, though, is
14 for you to bring to the Board's attention issues
15 or concerns that the Board may not itself have
16 recognized and the consultants might not have
17 brought to the attention of the Planning Board.

18 MR. BROWNE: Thank you, Mike.

19 The first item of business we have is a
20 public hearing. It's a three-lot subdivision
21 referred to as O'Brien Lane II, being represented
22 by Charles Brown of Taconic Design Engineering.

23 Before Charles gives his presentation,
24 I would ask Ken Mennerich to read the notice of
25 hearing.

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2 MR. MENNERICH: "Town of Newburgh.
3 Notice of hearing, Town of Newburgh Planning
4 Board. Please take notice that the Planning
5 Board of the Town of Newburgh, Orange County, New
6 York will hold a public hearing pursuant to
7 Section 276 of the Town Law on the application of
8 O'Brien Lane II for a three-lot subdivision on
9 premises O'Brien Lane off of Pressler Road. Said
10 hearing will be held on the 16th day of September
11 2010 at the Town Hall Meeting Room, 1496 Route
12 300, Newburgh, New York at 7 p.m. at which time
13 all interested persons will be given an
14 opportunity to be heard. By order of the Town of
15 Newburgh Planning Board. John P. Ewasutyn,
16 Chairman."

17 MR. BROWNE: Thank you.

18 I'll ask Frank Galli to give us the
19 status of the mailings.

20 MR. GALLI: The notice of hearing was
21 published in The Mid-Hudson Times and The
22 Sentinel. Three were mailed out and three were
23 returned. The notices are all in order.

24 MR. BROWN: Thank you. My name is
25 Charles Brown, I'm the engineer for the

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applicant.

The proposal here before the Planning Board is for an existing 7.3 acre parcel at the end of O'Brien Lane, which is a private road that comes off of Pressler Road. O'Brien Lane is presently under construction.

The proposed subdivision is for two new building lots, one a little over an acre and the other one about -- I'm sorry, the other about two-and-a-quarter acres, with the balance proposed not to be developed at this time.

Both lots will be serviced by wells and septics. The well and septic designs have been provided to the consultants for the Planning Board.

That's it.

CHAIRMAN EWASUTYN: Okay. As Mike Donnelly had said earlier this evening, anyone here who has any questions or comments, please raise your hand and give your name and your address.

Sir.

MR. GLOCK: My name is Marty Glock and I live in Chestnut Ridge, New York. I am a

1 partner in the construction that is going on on
2 O'Brien Lane. In particular, we have a lot of
3 money going into the infrastructure of the
4 private road with the retention pond and
5 drainage. Being that Mike O'Brien wants to take
6 advantage of this existing subdivision or the
7 infrastructure we're putting in, we're asking if
8 the Planning Board would consider to have this as
9 part of the improvement. Being that he wants to
10 develop, he should compensate us for our expenses
11 that he's taking advantage of for his business.

12
13 CHAIRMAN EWASUTYN: I'll turn to Mike
14 Donnelly, Planning Board Attorney, to respond to
15 that.

16 Mike.

17 MR. DONNELLY: I'm not sure what the
18 point is fully here. The applicant has the right
19 to apply for what's permitted by the ordinance,
20 and the Board rules upon what he's applied for.
21 The fact that he might make a profit from that is
22 his entitlement.

23 MR. GLOCK: This is the road that we're
24 putting in, and it's costing us a lot of money.
25 We're seeing if there's some way that the

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Planning Board can say --

MR. DONNELLY: One of the conditions of the resolution, if this matter is approved, is the applicant is going to have to demonstrate that he has the authority to use this road and that there is a maintenance agreement in effect that will require that all those that use it are required to share in the cost of maintaining it. I haven't seen that document yet but it will need to be presented.

MR. GLOCK: Yeah. That's probably going to be coming. These are new lots. We have a performance bond posted on completing this road to the specs. We're trying to see if there's any way that the Planning Board would say okay, there's the infrastructure that's here and you're trying to put in something new while this is coming in, you should take part in that as well.

MR. DONNELLY: I suggest you have that discussion with him. The Town allows extensions of private roadways provided that there's the authority to use it and leaves to the private parties the issue of on what terms they share the cost of construction and maintenance of those

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roadways in the future.

MR. HINES: This doesn't involve an extension. This is a previously approved --

MR. DONNELLY: It's just a cul-de-sac and a driveway that comes off it.

MR. GLOCK: Yes. Thank you.

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

MR. RIVERA: My name is Angel Rivera. I think I border his property. I'm not sure what it is. May I take a look at it?

CHAIRMAN EWASUTYN: Sure.

MR. RIVERA: I've just got to know where I'm at in relation to what you're proposing.

MR. BROWN: You're Rivera?

MR. RIVERA: I'm Rivera.

MR. BROWN: You're right here.

MR. RIVERA: Are you going over the Gidneytown Creek?

MR. BROWN: No.

MR. RIVERA: It's here.

MR. BROWN: Right. That's the balance parcel, lot 8. These are the two new building

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lots that are proposed.

CHAIRMAN EWASUTYN: Can you hear him?

MR. BROWN: He asked if we were crossing the Gidneytown Creek. I said no, there's nothing in this proposal to cross the creek. The balance of the parcel is to remain undeveloped at this time. The two new building lots are off the cul-de-sac. Again, that's under construction. They are here and here.

Mr. Rivera, this is your lot up here.

MR. RIVERA: I see. So this is where we are. How far does the road go down?

MR. BROWN: This is the end of the road. This road was previously approved with the former subdivision.

MR. RIVERA: And that's the end?

MR. BROWN: That's the end.

MR. RIVERA: It goes this way?

MR. BROWN: Right. It goes up and comes out on Pressler. That's pretty close to the property line. It's a continuation of the subdivision that you bought from. It's under construction now. It's there.

MR. RIVERA: Yeah. There's some homes

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here.

MR. BROWN: Those houses were proposed under the previous subdivision, O'Brien Lane. It was approved roughly three-and-a-half years ago. The two new houses are proposed with this subdivision are here, which is roughly 250 feet from your property.

MR. RIVERA: Okay. Thank you.

CHAIRMAN EWASUTYN: Any additional questions or comments from the public at this time?

(No response.)

CHAIRMAN EWASUTYN: I'll turn to the representatives for the Town.

Jerry Canfield, Code Compliance?

MR. CANFIELD: We have no comments.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: The applicants have addressed our previous comments.

We just note, or continue to note that proposed lot 1 contains --

MR. BROWN: Lot 6.

MR. HINES: Lot 6. I'm sorry. Lot 6

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O'BRIEN LANE II

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contains a six-bedroom septic design. It's not approved right now for a duplex and would have to come back for site plan and architectural review.

Otherwise, all of our previous comments have been addressed.

MR. BROWN: We've added notes to the plans to reflect that.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Yes. The applicant provided the letter regarding the tree harvesting operation from the DEC as requested.

A revised EAF was submitted showing no outside agency approvals are required.

The applicant will need to submit a maintenance agreement for lots 7 and 8.

Also, are you planning on deferring the parkland fee until the time of the building permit?

MR. BROWN: I don't think so, no.

MR. COCKS: Okay. If you are, there are notes. If not, that's fine. It will have to be posted before the plans are signed.

MR. BROWN: Would it be better to say

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O'BRIEN LANE II

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yes now and then he pays it or it's better to say
no now?

MR. COCKS: If you want to defer it you
have to put a note on the plans and submit a form
to Mike Donnelly. It's your choice.

MR. BROWN: Okay.

CHAIRMAN EWASUTYN: Thank you, Bryant.
Comments from Board Members. Frank
Galli?

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Cliff Browne?

MR. BROWNE: Nothing.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no questions.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comment.

CHAIRMAN EWASUTYN: Any additional
questions or comments from the public?

(No response.)

CHAIRMAN EWASUTYN: Being that we've

1 satisfied any questions or comments from the
2 public, I'll move for a motion to close the
3 public hearing for the three-lot subdivision of
4 O'Brien Lane.
5

6 MR. GALLI: So moved.

7 MR. FOGARTY: Second.

8 CHAIRMAN EWASUTYN: I have a motion by
9 Frank Galli. I have a second by Tom Fogarty. Is
10 there any discussion of the motion?

11 (No response.)

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

14 MR. GALLI: Aye.

15 MR. BROWNE: Aye.

16 MR. MENNERICH: Aye.

17 MR. PROFACI: Aye.

18 MR. FOGARTY: Aye.

19 MR. WARD: Aye.

20 CHAIRMAN EWASUTYN: Myself yes. So
21 carried.

22 At this point we'll refer to Mike
23 Donnelly, Planning Board Attorney, to give us
24 conditions of approval for the three-lot
25 subdivision.

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2 MR. DONNELLY: The first condition will
3 be authorizing the deferral of the landscaping
4 fees. It's an either/or wording. You can either
5 pay. It's the fees in lieu of parkland.

6 MR. BROWN: Rec fees. We're creating
7 one additional building lot.

8 MR. DONNELLY: You're right. You're
9 making three, so there's two new.

10 MR. BROWN: Well, one of them is, at
11 this point, not buildable. I'm just getting
12 clarification.

13 MR. DONNELLY: That was the one that
14 already existed. You have two new ones you're
15 making. Let me ask you: Was there one building
16 lot before?

17 MR. BROWN: Yes.

18 MR. DONNELLY: So you're creating one
19 additional building lot. You're correct, it
20 should be one fee. There's only one new building
21 lot. You may either pay it before the map is
22 signed, or, if you provide the documentation
23 required by the resolution condition, you may
24 defer it until the time of building permit.

25 MR. BROWN: Okay.

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2 MR. DONNELLY: Next, we included the
3 condition that we've discussed already, that this
4 is for a single-family home only, and if you wish
5 to build a duplex you need to return for site
6 plan approval.

7 MR. BROWN: And architectural.

8 MR. DONNELLY: I'll need to review the
9 original -- yes, and Architectural Review Board
10 -- the private easement and maintenance agreement
11 that provides access to these lots, a common
12 driveway easement and maintenance agreement.

13 Finally, the condition regarding the
14 payment of fees in lieu parkland for the one new
15 building lot in the subdivision.

16 CHAIRMAN EWASUTYN: Thank you.

17 Any questions or comments on what was
18 presented?

19 (No response.)

20 CHAIRMAN EWASUTYN: I'll move for a
21 motion then to grant approval for the three-lot
22 subdivision on O'Brien Lane subject to the
23 conditions that our Attorney, Mike Donnelly, has
24 just presented in the final resolution.

25 MR. PROFACI: So moved.

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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: And myself. So carried.

Thank you.

MR. BROWN: Thank you very much.

(Time noted: 7:12 p.m.)

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

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

DATED: October 4, 2010

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

----- X
In the Matter of

MAGYAR SUBDIVISION
(2010-09)

Larabee Lane off of Route 9W
Section 9; Block 1; Lot 16
R-3 Zone

----- X

TWO-LOT SUBDIVISION

Date: September 16, 2010
Time: 7:12 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: FRANK VALDINA

----- X

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

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MR. BROWNE: The next item of business we have is a two-lot subdivision, Magyar Subdivision, represented by Valdina Consulting. Did I get that right?

MR. VALDINA: Yes.

MR. BROWNE: Great.

MR. VALDINA: I'm Frank Valdina, Valdina Consulting Engineers, representing the Magyars on this proposed two-lot subdivision. We've been before the Board previously.

We went before the ZBA to get a variance for the front yard for the existing building, the house that was built in 1920.

The proposal is to take the 2.83 acre parcel and cut it into two lots. One will retain the existing structures. The second lot, which will be 1.7 acres, more or less, we're proposing for a new residential structure to be built on that property.

All the comments and concerns of the consultants have been addressed. To my knowledge there aren't any more outstanding items.

I also did forward to the Planning Board Attorney a copy of the deed and the

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proposed driveway maintenance agreement as requested at the last Planning Board meeting.

CHAIRMAN EWASUTYN: Thank you, Frank.

At this point I'll turn to our representatives. Jerry Canfield, Code Compliance?

MR. CANFIELD: We have no comment on this.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: We've reviewed the subsurface sanitary sewer disposal system for the new lot and found that acceptable.

The existing lot is served by municipal water through a lateral coming down from 9W in some form, and the proposed lot will be served by a well. So our previous comments have been addressed with the addition of those to the plans.

CHAIRMAN EWASUTYN: Thank you.

Bryant Cocks, Planning Consultant?

MR. COCKS: As mentioned, the variance for the front yard was granted on August 26, 2010.

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2 The Orange County Planning Department
3 issued a Local determination for the project on
4 May 17, 2010.

5 The applicant revised the location map
6 to show the adjacent zoning districts, and also
7 added topography on the plans as requested.

8 The plans are going to need the
9 surveyor's and engineer's stamp and signature
10 before they can be signed.

11 A revised EAF was submitted.

12 They show the threatened and endangered
13 species information on the DEC website.

14 The applicant stated they're going to
15 pay the \$2,000 parkland fee before the signing of
16 the plans.

17 There was a note on the -- I think in
18 the narrative that stated that you wanted to
19 install a stop sign at the intersection of
20 Larabee Lane and Route 9W.

21 MR. VALDINA: That was a request of the
22 Planning Board.

23 MR. COCKS: I think we had a question
24 on that. Ken, is that allowed, a stop sign at
25 the end of a private road on Route 9W?

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MR. WERSTED: I don't think typically they would put one there. I have to look at it more.

How many houses are on the private road?

MR. VALDINA: Well there's these two, a barn, and I believe there may be one other that comes out onto it. There isn't one there now. There is a street sign but no private road sign. And there is a structure right on 9W which will be opening soon. I think it's a breakfast/lunch type of deli --

MR. WERSTED: I don't think it's required --

MR. VALDINA: -- which uses the same area.

MR. WERSTED: I don't think it's required as part of a DOT request or anything. The basic rules of the road are that you have to stop before you enter an intersecting roadway, and that's pretty much standard on probably most small residential roads.

MR. VALDINA: We'd be happy to remove the note, even though I think they may have

1 purchased the sign. You do have the entrance to
2 the cemetery just past this. Cedar Hill. As I
3 say, this little deli there will be cutting
4 across in the front of the end of this road
5 anyway. The way traffic goes, they'll take the
6 convenient route. Basically you're only going to
7 have these two that come out along the private
8 road itself.
9

10 CHAIRMAN EWASUTYN: Thank you, Frank.
11 Additional comments from Board Members?

12 MR. GALLI: No additional.

13 MR. BROWNE: Nothing.

14 MR. MENNERICH: No questions.

15 MR. PROFACI: Nothing.

16 MR. FOGARTY: I have no questions.

17 MR. WARD: No comment.

18 CHAIRMAN EWASUTYN: I'll move for a
19 motion to declare a negative declaration for the
20 two-lot subdivision of Magyar and to schedule the
21 21st of October for a public hearing.

22 MR. PROFACI: So moved.

23 MR. GALLI: Second.

24 CHAIRMAN EWASUTYN: I have a motion by
25 Joe Profaci. I have a second by Frank Galli. Any

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discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Frank, Bryant will contact the assessor's office --

MR. VALDINA: I have a question.

CHAIRMAN EWASUTYN: I figured you might. That's a question for Mike Donnelly.

MR. VALDINA: Yes. As you know, we did go before the ZBA. We did send out notifications. Because of the proximity of the condo project, the required distance from the ZBA notification is 300 feet. We go onto that condo site about 18 feet. It's just a sliver of land about 70 feet long. The closest building is about

1
2 600 feet away from this project. We sent out 292
3 notices, because of the condo, because everyone
4 owns a little piece of the land. Of that, 176
5 were received, 108 -- that comes to 284. This is
6 the information I got from the ZBA attorney, or
7 the secretary anyway. 108 were undelivered.
8 There were 4 that were mailed out later because
9 of a mess up. Anyway, no one showed at the
10 hearing. There wasn't a person.

11 My understanding is under the code
12 that, basically, the basic requirement is that
13 the legal ad be placed in the official
14 newspapers. I know the Board does have the
15 authority to require additional notification.
16 I'm requesting any additional notification
17 request be waived based on past experience with
18 this.

19 CHAIRMAN EWASUTYN: What do you -- how
20 do you suggest we notify of this hearing?

21 MR. VALDINA: Just the ads in the
22 Town's legal papers under the code, Section
23 163-5.

24 MR. DONNELLY: I didn't realize it was
25 optional. I can look quickly here. The internet

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connection is a little slow.

CHAIRMAN EWASUTYN: Do you have a copy of the code?

MR. VALDINA: Yes, I do.

MR. DONNELLY: That would be helpful.

CHAIRMAN EWASUTYN: Once a consulting engineer for the Town, always a consulting engineer.

MR. VALDINA: Every time I read that code book I find something more interesting.

MR. DONNELLY: Frank is certainly right. The public hearing notice is the only mandatory requirement. The Board may provide for additional hearing notice.

What you had asked for at the ZBA level, although it --

MR. VALDINA: Well I didn't have a choice.

MR. DONNELLY: I know there you didn't. You were asked to mail to the unit owners that were within the sliver rather than the unit owners on the basis they had common property. That might be the fair approach, mail to the single-family homes within the distance and to

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any unit owners whose units are within that distance, but not to every unit owner.

MR. GALLI: There's no units in the distance.

MR. HINES: Why not the board of managers or the condo association?

MR. BROWNE: The board of managers is the only legal entity that can do any business for the condo.

MR. DONNELLY: We can mail to them. If you thought people's whose windows looked out over the project area might have some concern and want to come, it might be nice to mail to them. Obviously you can mail to the condo owners as well. You have the authority to craft the notice as you think appropriate. Thank you.

MR. VALDINA: 292 and not an individual showed.

MR. GALLI: Can we send a notice to the -- what do they call that?

MR. BROWNE: Board of managers.

MR. GALLI: Board of managers is one. There's no buildings or anything within 300 feet or 500 feet?

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2 MR. VALDINA: I don't believe I have it
3 with me. It only cuts a sliver of their
4 property. It goes onto their property 18 feet
5 because there's a jog in the property line. It
6 hits that 18 feet, swings around, and then you
7 have a little ark which is 18 feet deep by about
8 70 feet long, and the closest building I'll say
9 is 500, 600 feet away from that sliver of land.
10 Just the configuration of their lot. We had to
11 go to the 292 because of the ZBA requirements,
12 you have to notify everyone within 300 feet, and
13 under a condo project every owner had to be
14 notified. I believe that may have covered both
15 sides of the street even though the code states
16 on the other side. I really don't know. All I
17 know is when I saw that list I was shocked, and
18 it cost almost \$1,600 for notification for a
19 little two-lot subdivision.

20 CHAIRMAN EWASUTYN: So Frank, your
21 suggestion is that we have him notify the board
22 of managers and advertise in both legal papers?

23 MR. GALLI: Mm'hm'. Do the legal one
24 and then just have them mail the one for the
25 managers.

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MR. PROFACI: I think Frank was suggesting waiving the mailings all together. Weren't you?

MR. VALDINA: Yes, I was. That was my request.

CHAIRMAN EWASUTYN: What we're discussing this evening is notifying the board of managers, advertising in the two papers, each that are appointed by the Town Board, and that notification in the paper would be five days, ten days prior to the hearing?

MR. DONNELLY: The normal.

CHAIRMAN EWASUTYN: Is the Board in agreement with that?

MR. VALDINA: I have a question. Why would you notify the board?

CHAIRMAN EWASUTYN: Board of managers.

MR. BROWNE: It's the board of managers that can do any business for the condo on behalf of the condo. No individual unit owner can participate in any business except for the board of managers. They're the only legal group that can do it. The rest of them, it's nice that they maybe would be able to know about it, but they

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can't do diddly squat about it. I'm sorry.

MR. VALDINA: Is it worth --

CHAIRMAN EWASUTYN: I have a recommendation from Frank Galli. I'm just following through. I'm asking the Board.

MR. GALLI: I don't know too much, like I said, about the condo association, how they work. I'm only going by what Cliff said. If we don't have to notify anybody, that's fine also.

MR. BROWNE: For me, if we just could notify them as just a matter of courtesy. Other than that, I would say no. Under these circumstances, with the property encroachment for the 300 feet, the minimum amount, and the exorbitant cost to do it, I would say no.

CHAIRMAN EWASUTYN: No to the board of managers also?

MR. BROWNE: No to the whole thing. Just cut out the whole thing.

CHAIRMAN EWASUTYN: Ken Mennerich, your opinion?

MR. MENNERICH: I agree not to send them.

CHAIRMAN EWASUTYN: Joe Profaci?

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MR. PROFACI: I completely waive the mailing.

MR. FOGARTY: I don't think we should do the mailing, however to send something to the -- I don't know what kind of association they have. As matter of information, put it on their community bulletin board or something just to let people know if they want to come to a public hearing, here is where it's going to be.

MR. BROWNE: They had it at the ZBA and nobody turned out for that.

MR. FOGARTY: I know. I know.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: I favor just putting it in the paper and going with that.

CHAIRMAN EWASUTYN: Okay. We'll leave it up to your discretion as far as the notice of hearing that will be posted in the paper. If you want to take the liberty of mailing that to the condo association and ask them to post it, we'll leave you with that responsibility. Okay?

MR. VALDINA: Thank you.

CHAIRMAN EWASUTYN: Because you've had the opportunity over the years to sit on both

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sides of the table. In fairness to that spirit,
I'll leave it up to your discretion.

MR. VALDINA: Thank you.

CHAIRMAN EWASUTYN: I'll move for a
motion to set the public hearing for the 21st of
October 2010 --

MR. GALLI: We did that already.

CHAIRMAN EWASUTYN: I know. I want to
add to that -- and to allow for the public
hearing notice to be simply advertised in both
the two local papers that the Town Board adopts
each year to represent the Town.

MR. PROFACI: I will re-move that.

MR. GALLI: I'll second.

CHAIRMAN EWASUTYN: Cliff, did you have
anything?

MR. BROWNE: Yes. A comment. I think
it's imperative we put the reason that we're
doing this in the minutes so next time around we
don't get barraged by folks in the same
situation. I think this is a very abnormal
situation and that's why we're doing this.

MR. DONNELLY: I think you stated the
reasons well.

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CHAIRMAN EWASUTYN: Okay. That's allowed in the code.

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: Under what section?

MR. DONNELLY: 165?

MR. VALDINA: 163-5(b). I don't have the whole book.

CHAIRMAN EWASUTYN: We have a motion by Joe Profaci. We have a second by Frank Galli. We had discussion by both the Board and Cliff Browne, and that motion was, again, to restate that the public hearing will be held on the 21st of October 2010 under section 163.5(b). The Planning Board has -- would you call it the option, Mike?

MR. DONNELLY: Sure. The authority to waive or craft whatever notice it deems appropriate.

CHAIRMAN EWASUTYN: The Planning Board has the authority to waive and craft whatever notice they find acceptable for notifying of a public hearing, and the Planning Board chose to have this advertised in the two local papers. Okay.

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2 If you would speak to Bryant Cocks,
3 he'll be able to arrange -- actually, you'll work
4 with him as far as the notice.

5 MR. COCKS: Yes.

6 CHAIRMAN EWASUTYN: So I have a motion
7 by Joe Profaci. I have a second by Frank Galli.
8 Again we had discussion. I'll ask for a roll
9 call vote at this time.

10 MR. GALLI: Aye.

11 MR. BROWNE: Aye.

12 MR. MENNERICH: Aye.

13 MR. PROFACI: Aye.

14 MR. FOGARTY: Aye.

15 MR. WARD: Aye.

16 CHAIRMAN EWASUTYN: Myself. So
17 carried.

18 Thanks.

19 MR. VALDINA: Thank you, gentlemen.

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21 (Time noted: 7:27 p.m.)
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C E R T I F I C A T I O N

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

DATED: October 5, 2010

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

----- X

In the Matter of

53 MAPLE AVENUE, LLC
(2010-18)

Orchard Drive
Section 1; Block 1; Lot 138.1
AR Zone

----- X

CONCEPTUAL TWO-LOT SUBDIVISION
AND SITE PLAN

Date: September 16, 2010
Time: 7:28 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: LAWRENCE MARSHALL &
ANTHONY COPPOLA

----- X

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

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2 MR. BROWNE: The next item of business
3 we have is a conceptual two-lot subdivision and a
4 site plan with ARB known as 53 Maple Avenue, LLC,
5 being represented by Mercurio, Norton & Tarolli.

6 MR. MARSHALL: Good evening. My name
7 is Larry Marshall from Mercurio, Norton, Tarolli.
8 We're here before you with a proposed lot line
9 change for a two-lot subdivision of lands that
10 were previously -- a two-lot subdivision that was
11 previously filed with the County Clerk's office
12 on June 25, 2010. At that time it was the Scenic
13 View Subdivision, a two-lot subdivision.

14 What we're proposing here is simply to
15 move one of the -- the front lot, lot 6, the rear
16 line of that back towards lot 7, providing
17 sufficient area for lot 6 to allow a duplex home
18 on it.

19 The other changes that have been made
20 to the plans have just been simply alterations to
21 the proposed sewer system for lot 6 to allow the
22 two three-bedroom units in the house. Previously
23 it was a four-bedroom house that was proposed.
24 Now it's essentially two threes or a six-bedroom.
25 The sewer system had to be enlarged to do that.

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The subdivision is in the AR zoning district and all lots meet zoning.

CHAIRMAN EWASUTYN: AJ, do you have a rendering that's proposed?

MR. COPPOLA: We do. Basically, real quick, on the inside, as was stated, it's a duplex. It's two townhouse units. Each of them are 1,270 square feet, two floors, three bedrooms upstairs, two-and-a-half baths total.

We basically laid this out so that it presents itself as a single-family home so that on the front elevation you see one door, one porch, and then if you go around to the side there's the second door. So you're not seeing two doors which would clue you in to the fact that it's a two-family.

So basically the architecture is very simple. Fiberglass shingles up on top. We're going to do a different color fiberglass shake style in the gable, vinyl siding, and then an accent color on the shutters. And all those colors are depicted on the elevation, and accurately depicted on the colored rendering.

CHAIRMAN EWASUTYN: Thank you.

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At this point I'll turn to our representatives. Jerry Canfield, Code Compliance?

MR. CANFIELD: No comments, John, on this.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: No comments, other than -- on the architectural?

CHAIRMAN EWASUTYN: The lot line change itself.

MR. HINES: Our first comment on the lot line change is that this was subdivided recently, June of this year. We believe that may create a requirement of a major subdivision as it's a resubdivision within the three-year period.

Then I have just a comment on the septic system detail. It needs to be cleaned up and clearly showing the parking spaces, the four parking spaces required for the duplex. It's tough on the 100 scale plan, Larry, to see.

MR. MARSHALL: That's no problem. We'll provide you with a blowup view of lot 6, if that's acceptable.

MR. HINES: Yes.

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MR. MARSHALL: We'll show the details for that.

Regarding the question on the sewage disposal system, we'll clarify the detail as well.

MR. HINES: That's all we had.

MR. DONNELLY: On the subdivision issue, you may want to inquire of the Health Department what their position is. And, if you give us a letter that says it doesn't require it, that will dispense of the requirement. Lot line changes or subdivisions under our code, generally speaking, a resubdivision of land subject to subdivision approval would then, within the limited time period, require Health Department approval even though you're not creating a new lot. That's why you need to check with the Health Department.

MR. MARSHALL: Okay. I will check with them. There's no question that we understand that, under your code, that this is a major subdivision, but the question would be, I guess -- would be if it constitutes a realty subdivision that requires Orange County Health

1 Department. We have reviewed the New York State
2 Realty Subdivision laws, and it clearly states
3 that creation of three -- four or more lots under
4 five acres within a three-year period would
5 constitute a realty subdivision, but we will
6 contact the Orange County Health Department and
7 see if they --

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9 MR. DONNELLY: That's the better way to
10 do it. You may well be right. I think that
11 might be the trigger language. I didn't have a
12 chance to look at it.

13 CHAIRMAN EWASUTYN: Well spoken, Larry.
14 Bryant Cocks?

15 MR. COCKS: My first comment was
16 regarding the conversation we just had.

17 I also had parking space comments.

18 All the notes from the previous
19 subdivision will be included on the new
20 subdivision plan.

21 Besides the Health Department, this is
22 going to have to go to the Town of Plattekill and
23 the Orange County Planning Department.

24 The applicant did provide wetland
25 delineation, and that was included with the

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previously approved subdivision.

We have no further comments.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: No comments.

MR. BROWNE: Nothing.

MR. MENNERICH: I have no questions.

MR. PROFACI: No questions.

MR. FOGARTY: No comment.

MR. WARD: No comment.

CHAIRMAN EWASUTYN: I'll move for a motion to grant conceptual approval for the two-lot subdivision and site plan for the 53 Maple Avenue lot line change.

MR. WARD: So moved.

MR. FOGARTY: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

Would the Board like to grant ARB
approval for the two-family proposed shown by AJ
Coppola?

MR. PROFACI: Yes.

MR. GALLI: I'll make a motion.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: We have a motion by
Frank Galli to approve the two-family under ARB.
We have a second by Joe Profaci. I'll move for a
roll call vote starting with Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

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The next thing that is a motion is to circulate to the Orange County Planning Department.

Bryant, is there a need at this point to establish or to circulate for lead agency?

MR. COCKS: I think it would be dependent on what the Health Department says. If the Health Department says that it does need approval, then they would be an interested agency so we would have to.

CHAIRMAN EWASUTYN: Mike, is there -- just in good planning, should we move to circulate for lead agency?

MR. DONNELLY: It couldn't hurt.

MR. HINES: Plattekill, too.

MR. DONNELLY: They don't have approval.

CHAIRMAN EWASUTYN: We'll move to declare our intent for lead agency for the conceptual two-lot subdivision and site plan for 53 Maple Avenue.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by

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Ken Mennerich. I have a second by Joe Profaci.
I'll move for a roll call vote starting with
Frank Galli.

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So
carried.

If you would address us in writing as
to the determination that you found based upon
the Realty Law, we'd appreciate that.

MR. MARSHALL: Sure.

(Time noted: 7:36 p.m.)

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

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

DATED: October 5, 2010

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

----- X

In the Matter of

MARKETPLACE AT NEWBURGH
(2004-54)

Route 300 and Route 52
Multiple Section, Block and Lot numbers
IB and R-3 Zones

----- X

AMENDED SITE PLAN

Date: September 16, 2010
Time: 7:36 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JOHN BAINLARDI

----- X

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

1
2 MR. BROWNE: The next item of
3 business we have is Marketplace at Newburgh,
4 an amended site plan, being represented by
5 Wilder Balter Partners.

6 MR. BAINLARDI: Good evening. Thank
7 you for the opportunity to say a few words this
8 evening for the project sponsor, Wilder Balter
9 Partners, WB Interchange Associates. My name is
10 John Bainlardi, I'm the project development
11 manager.

12 Subsequent to the Board's August 19th
13 meeting, at which time we presented our proposed
14 amended site plan, we received various comment
15 letters from your Board's consultants. You have
16 before you our September 1 submission. You also
17 have our written response to Zenard and
18 Steinbet's letter to the Board dated September
19 7th which comments on the proposed project
20 amendments.

21 As we had previously represented, the
22 proposed amendments to the project plans are
23 limited to those revisions necessary to
24 accommodate the prototypical design requirements
25 of two tenants, namely Shop Rite and BJ's

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2 Wholesale Club, together with some grading
3 modifications, designed to reduce fill by
4 lowering the finished elevations of these
5 buildings, and pertinent parking.

6 The project plans continue to provide
7 for the construction and opening of all three
8 access points prior to the issuance of the first
9 building certificate of occupancy. We do not now
10 propose, nor have we ever proposed, any phasing
11 of the project.

12 We believe that we have fully responded
13 to all questions and comments from your Board and
14 the Board's Consultants.

15 We respectfully request that you
16 consider adoption of a SEQRA consistency
17 determination and a resolution approving the
18 amended site plan.

19 Thank you. I'll be available for any
20 questions you may have.

21 CHAIRMAN EWASUTYN: Thank you.

22 At this point I'll turn the meeting
23 over to Mike Donnelly, Planning Board Attorney.

24 Mike.

25 MR. DONNELLY: We spent some time

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2 during the work session reviewing the issues that
3 are before you while trying to distill them at
4 this point.

5 First I'll state the obvious. This is
6 an approved project, both from a site plan and
7 subdivision point of view. It's also a project
8 that was subject to full-blown SEQRA review,
9 including an Environmental Impact Statement and
10 three separate SEQRA Findings Statements, as the
11 project developed.

12 From the beginning the project was
13 proposed as a single-phase project, and that
14 remains the case today. It did, however,
15 envision, throughout the SEQRA review and in the
16 site plan resolution, that there would be
17 construction sequencing, which is a distinct
18 concept that we had discussed at these Board
19 meetings many times. There were significant
20 differences between that. As you know, a phased
21 project is one that is built sequentially in
22 stages, each of which is a stand-alone phase.
23 After the first phase is built there may or may
24 not be construction of the second or third, or as
25 many phases as there are, and that raises a

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2 different set of concerns than construction
3 sequencing. Sequencing in the sense I mean it is
4 simply the fact that the project will be built
5 over time and we're not going to build every
6 store in the center, and then when they're all
7 done issue the first certificate of occupancy.

8 The current amendment is one that was
9 anticipated in the Findings and the site plan.
10 The applicant has now firmed up two tenants and
11 wishes to come before you with the slightly
12 altered footprints, the changes in grading, and
13 to get a firm final site plan for those two
14 buildings consistent with the resolution of
15 approval granted to the site plan itself.

16 It is important to note that what SEQRA
17 envisioned and what your site plan resolution
18 envisioned is that the series of conditions that
19 are included within those documents apply to the
20 construction sequencing. Most importantly here,
21 all three entrance points will have to be
22 constructed before a certificate of occupancy can
23 be issued for the first tenant.

24 The issue, obviously, that's raised
25 here is how does SEQRA apply. As you're aware,

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2 because we've been down this road a number of
3 times in the past, SEQRA has rules for what
4 happens when an application that was subject to
5 full-fledged environmental review comes back
6 before you with an amendment. When that happens
7 the regulations do not require you to do what you
8 do for a brand new application, that is to type
9 the action, to review an environmental assessment
10 form and ultimately to issue a declaration of
11 significance, and at that fork in the road go
12 whichever way you lean. It doesn't require
13 coordinated review and so forth.

14 Instead, what the SEQRA regulations
15 require you to do is to examine the amendment
16 against the backdrop of the earlier environmental
17 review. Toward that end, the applicant has been
18 before you several times on this amendment.
19 You've asked your consultants to look at the
20 project, this amended site plan, the earlier EIS,
21 the SEQRA Findings Statement, the amended
22 Findings Statement, and to examine what is
23 proposed with the eye toward determining if any
24 new environmental issue is raised and whether or
25 not any issues that exist in the proposal were

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2 adequately studied in the EIS and were governed
3 by appropriately worded findings.

4 You have a number of memos from your
5 consultants here before you, and I will let them
6 speak for themselves, but they suggest to me that
7 they had found no new environmental issue,
8 nothing that hasn't already been studied in the
9 EIS, and what is proposed here is consistent with
10 the Findings Statement and the resolution, and is
11 certainly not prohibited by any SEQRA findings.
12 When that is the case, and if that is your
13 conclusion, then no further SEQRA compliance is
14 required.

15 In order to keep the SEQRA documents
16 straight, it's been my recommendation to you, and
17 you've followed in the past, that when you're at
18 such a juncture you issue what I've called a
19 SEQRA consistency determination, which is a
20 finding that there are no issues that haven't
21 been studied, and that this plan is consistent
22 with the SEQRA proceedings, and that there's
23 nothing that requires further SEQRA review. You
24 have that draft document before you. We went
25 over it during the work session.

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2 There have been several letters that
3 you have received from interested parties, one
4 the SOS Marketplace Group who has urged
5 repeatedly that a supplemental Environmental
6 Impact Statement is required, and urges that
7 position yet again; and a letter from an attorney
8 for another project, the Shoppes at Union Square,
9 making similar arguments. We've discussed some
10 of what was in those letters at the earlier work
11 session. Let me just review quickly what they're
12 asking for. They're asking for you to prepare a
13 supplemental Environmental Impact Statement. As
14 I said to you, it's kind of the converse of what
15 I just went over, that only when there are issues
16 that were not addressed, or were not adequately
17 addressed during the earlier environmental review
18 need you require preparation of a supplemental
19 Environmental Impact Statement. That is a
20 discretionary determination on your part, and you
21 need to make that determination this evening
22 based upon the information you have before you.

23 The only other piece I added during the
24 work session, and the only new argument, for want
25 of a better term, is the claim of Mr. Zaron's

1 that there's a need to address the potential
2 economic impacts of relocating the BJ's store and
3 the potential competitive harm to the Shoppes at
4 Union Square if the stores proposed to be located
5 here are in fact located. As I said to you
6 during the work session, the teachings of the
7 Court of Appeals cases are that economic concerns
8 standing alone are not environmental concerns and
9 should not, or at least need not be reviewed
10 under the State Environmental Quality Review Act.
11 However, if you were to find that those economic
12 concerns are intertwined with true environmental
13 concerns in the sense that the proposal would
14 result in significant change in the character of
15 the community or population trends, then you can
16 include them in your environmental review. It is
17 for you to make that determination. Off limits
18 are competitive concerns that don't relate to
19 community-wide migration shifts or change in
20 community character. So therefore, if you were
21 to conclude, after hearing from your various
22 consultants, that there's no need for further
23 environmental review, you could vote upon the
24 SEQRA consistency determination before you. And
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if you vote in favor of issuance of that, you would be in a position to rule upon the amended site plan, and I've prepared a draft resolution of approval if you're inclined to go that direction.

CHAIRMAN EWASUTYN: Thank you, Mike Donnelly, Planning Board Attorney.

At this time we'll request comments from our consultants.

Jerry Canfield, Code Compliance?

MR. CANFIELD: The Code Compliance Department has reviewed the construction sequencing plan that has been submitted in addition to the maps that depict all the work to be completed prior to issuance of a C of O. We find all the documents acceptable that were proposed.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: Our first comment is similar to Jerry Canfield's in that we have received the construction sequencing plan requested to assist the Building Department in knowing what infrastructure would need to be in

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2 place prior to the issuance of the first CO. We
3 went over at work session the various components
4 of that plan. The drainage facilities that are
5 proposed to be installed as part of the site are
6 tributary to both the stormwater management
7 facilities. The water, sewer and drainage
8 components of the plan have been identified on
9 that construction sequence.

10 We did note that no additional
11 disturbance outside of the activities previously
12 proposed occurs based on the changes, minor
13 changes, in the grading plan that have been
14 developed to provide an additional or change the
15 site access into the -- from the Route 52
16 roadway.

17 We did confirm that that plan contains
18 all three of the access drives, as previously
19 identified, as being constructed prior to the
20 issuance of the first CO, and that all conditions
21 of the original finding and approval will
22 continue to remain in effect.

23 With that, we have no additional
24 comments.

25 CHAIRMAN EWASUTYN: Thank you.

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Bryant Cocks, Planning Consultant?

MR. COCKS: Yes. The applicant revised the parking counts for the site plan to account for the spaces lost due to the cart corrals as we discussed at the last meeting.

They also revised the site plan to show a no parking sign around the loading dock for the Shop Rite delivery truck area.

The Orange County Planning Department did make a Local determination on the project on August 31, 2010. They had one advisory comment stating the proposed site plan amendments are in keeping with the construction limits of the previously approved site plan and the findings previously made by the Town.

I did take a look at the Findings Statement. There was a section of the Findings called "Applicability of Findings to Future Site Plan Modifications" which talks about this issue, modifying the site plan, and it seems that all five things listed here have been addressed and they're not going over any of the thresholds to warrant any further SEQRA review.

CHAIRMAN EWASUTYN: Thank you.

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2 Karen Arent, Landscape Architect?

3 MS. ARENT: Line-of-sight profiles were
4 submitted that illustrated the proposed gas
5 station location is less visible from Route 84
6 than the previously shown location. The profiles
7 illustrate the topography of vegetation screen or
8 block views of this station from Route 84.

9 Furthermore, the sponsor has agreed to
10 provide additional vegetation on the south side
11 of the facility.

12 The proposed lighting of the gas
13 station is now included in the set of documents.
14 The foot candle analysis illustrates the area
15 immediately adjacent to the pumps will be
16 brightly illuminated. The intensity of the light
17 resolves quickly and does not extend beyond the
18 canopy.

19 Additional construction completion
20 notes were added to the set of documents to
21 address comments regarding garbage removal, soil
22 and material stockpiling, landscaping, et cetera.

23 CHAIRMAN EWASUTYN: Thank you.

24 Ken Wersted, Traffic Consultant?

25 MR. WERSTED: We reviewed the plans

1 presented and compared them to the plans
2 previously used in the SEQRA determination and
3 found that the access, the traffic, the
4 development size is all consistent or less than
5 what was previously analyzed during the SEQRA
6 review.
7

8 The site plan comments that we
9 previously had have been addressed on this new
10 plan.

11 We did receive Zaron & Steinman's
12 letter which made a number of points relative to
13 traffic, and our review letter responds to many
14 of those, some of which talk about the access
15 points. The applicant addressed that. They plan
16 on opening all three of them at the time of the
17 CO.

18 The use of the site as a shopping
19 center is still consistent with what was
20 previously analyzed.

21 The square footage size has been
22 reduced from the original 850,000 square feet.

23 The other items that were pointed out
24 included the inclusion of the I-87, I-84
25 interchange project which is being developed at

1
2 the same time as the traffic analysis for this
3 project. The analysis included in the SEQRA
4 review of this project included projection of
5 those interchange modifications and the traffic
6 resulting from them.

7 The site development plan, the traffic
8 used a 15 percent past credit at the suggestion
9 of DOT. That estimate is fairly conservative.
10 The past percentage typically for shopping
11 centers and retail uses are more in line with 25
12 to 35 percent depending on the specific uses. So
13 the traffic volume would, therefore, be less
14 because the square footage has obviously come
15 down from the original proposal.

16 There is one comment about the
17 inclusion of the Shoppes at Union Square traffic
18 analysis and The Marketplace traffic analysis.
19 Because the Shoppes at Union Square came after
20 The Marketplace, it wasn't possible to foresee
21 that project at that time. However, when the
22 Shoppes at Union Square was doing their traffic
23 analysis, they had rightfully included The
24 Marketplace traffic. In review of all that
25 material, we basically found that the project as

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proposed now is consistent with what we had originally analyzed as part of the SEQRA documentation.

CHAIRMAN EWASUTYN: Thank you.

MR. WERSTED: The specific site plan modifications are relatively, basically, internal roadway, and in our opinion don't amount to a significant change.

CHAIRMAN EWASUTYN: Okay. Do any of the Board Members have any questions for the consultants? Frank Galli?

MR. GALLI: I think they covered it pretty well.

CHAIRMAN EWASUTYN: Thank you.

Cliff Browne?

MR. BROWNE: I don't have any questions. I'd just like to make a comment that I appreciate the in-depth reviews and the input. Thank you.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I have no questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No. I'm good. Thank you.

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CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no questions.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No questions.

CHAIRMAN EWASUTYN: Okay. At this time, again I'd like to turn to our Attorney, Mike Donnelly, to discuss the SEQRA consistency determination before us.

MR. DONNELLY: Yes. You have the document before you. We did review it at work session. It's in a format that you're familiar with because you have issued these in the past. It recites the history of the SEQRA analysis in order to be complete, and it essentially announces a finding that you will need to vote upon that effectively says that all potential environmental impacts of this project were adequately addressed during earlier environmental review and a finding that no new impacts will result from this amended approval, thus the amended application is within the scope of the earlier environmental review and is not prohibited by any SEQRA findings. As a result, no further SEQRA compliance is required because

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2 this amended approval will be carried out in
3 conformance with the conditions and thresholds
4 established in the EIS and the earlier issued
5 SEQRA findings and statements.

6 If that is your finding, you need to
7 vote upon it and then direct that Bryant file
8 this with the DEC and have it published in the
9 Environmental Notice Bulletin.

10 CHAIRMAN EWASUTYN: Would any of the
11 Board Members at this time have any questions or
12 comments for the SEQRA consistency determination
13 that was presented to us by Attorney Mike
14 Donnelly?

15 MR. GALLI: No.

16 MR. BROWNE: No comment.

17 MR. MENNERICH: No.

18 MR. PROFACI: No.

19 MR. FOGARTY: No comment.

20 MR. WARD: No.

21 CHAIRMAN EWASUTYN: I'll move for a
22 motion from the Board to approve and adopt the
23 SEQRA consistency determination of the Town of
24 Newburgh Planning Board for The Marketplace at
25 Newburgh.

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MR. PROFACI: So moved.

MR. FOGARTY: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Mike, would you review with us, please, the resolution of approval for the amended site plan for The Marketplace?

MR. DONNELLY: I have prepared, and given to you this evening, and reviewed during your work session a draft resolution of amended site plan approval for this project. The

1 resolution contains a recitation of the history
2 of the project and includes some of the same
3 language under your findings as appears in the
4 SEQRA consistency determination that you just
5 issued, and that includes the conditions that
6 apply to the approval. We reviewed those earlier
7 and I'll go over them again briefly.

9 First, in condition number 1, we note
10 the obvious, and that is except as modified in
11 this approval, all of the conditions of the
12 original granted subdivision and site plan
13 approval remain in force and effect as set forth
14 in this resolution in full.

15 Similarly, in condition 2, all
16 mitigation measures proposed within the EIS or
17 announced in the SEQRA Findings Statement, or
18 Statements because there were three of them, are
19 also made conditions of this approval as if those
20 mitigation measures were set forth at length
21 within this resolution.

22 We make the same condition in 3
23 regarding the Zoning Board's decision and any
24 conditions that were attached within that
25 decision.

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2 We highlight in condition 4 what is the
3 most important part of this construction
4 sequencing proposal, and that is a requirement,
5 so that everyone is on the same wave length, that
6 no certificate of occupancy will be issued for
7 any retail establishment shown on these amended
8 plans unless all of the improvements that are
9 shown on the cover sheet that's been reviewed by
10 your Consultants as well as by the Code
11 Compliance Department, and found satisfactory,
12 have been completed to the satisfaction of the
13 Code Compliance Department. That will ensure
14 that all of the improvements that are necessary
15 to protect the public's safety, health and
16 welfare will be satisfactorily completed before
17 any certificate of occupancy is issued for any
18 retail establishment.

19 Consistent with the SEQRA findings in
20 the original resolution of approval,
21 Architectural Review Board approval for the
22 facades and surrounding grounds for these two
23 stores will need to be approved by the Planning
24 Board consistent with the SEQRA findings. It is
25 noted that no such approval was given at this

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time.

We repeat the various conditions that relate to the need for a cohesive plan that were carried in the original resolution.

We note in condition 8 the possible requirement that when that ARB for the building, the specific proposals come before the Board, that some additional landscaping may need to be added and that a performance security for that additional landscaping, if any, that isn't within the existing approved landscape plan, may require additional financial security to be posted, all of which, under the Town Board's resolution, will need to be posted not before plan signing but, instead, before the issuance of building permits.

Lastly, condition 9, we include the standard condition of your site plan resolution, that no fixtures, amenities or structures may be built anywhere on the site that are not shown on the approved amended plans before you. The general conditions are your standard ones.

CHAIRMAN EWASUTYN: Thank you.

Any questions or comments from our Consultants?

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(No response.)

CHAIRMAN EWASUTYN: Questions or
comments from Board Members?

MR. GALLI: No.

MR. BROWNE: No.

MR. MENNERICH: No.

MR. PROFACI: No.

MR. FOGARTY: No questions.

MR. WARD: No.

CHAIRMAN EWASUTYN: I would move for a
motion then to approve the resolution of approval
for the site plan for The Marketplace as
presented by our Attorney, Mike Donnelly.

MR. FOGARTY: So moved.

MR. PROFACI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

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MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

Thank you, gentlemen.

MR. DONNELLY: John, before you close, I just want to note one thing. You did receive a letter from Keane & Beane, Joel Sachs. One of the complaints that was voiced in that letter was some frustration on Mr. Sachs' part in obtaining records from the Town and having an opportunity to address the Board. While there was a brief period, which was on August 19th when you last met, when Mr. Sachs wanted to see the Planning Board file at 4:20 in the afternoon before our meeting started at 5:00, when he was denied access, all of the other FOIL requests made by him had been acted upon by the Town, at least in so far as I'm aware. I'm also aware that many of the materials that he requested to be copied had been copied and had been waiting in the Town Clerk's office for him to pick them up for more than a week. So I simply note that Mr. Sachs has

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had more than sufficient opportunity to review those materials and present any position, if he wished to do so, to this Board.

CHAIRMAN EWASUTYN: Thank you for that.

Any questions from the Board Members in reference to Mike Donnelly's discussion?

(No response.)

CHAIRMAN EWASUTYN: Okay. I'll move for a motion from the Board to close the Planning Board meeting of the 16th of September.

MR. PROFACI: So moved.

MR. WARD: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

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CHAIRMAN EWASUTYN: And myself.
(Time noted: 8:02 p.m.)

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

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

DATED: October 5, 2010