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

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In the Matter of

CONIFER REALTY, LLC
(2010-16)

Fostertown Road at Wells Road
Section 39; Block 1; Lot 19
R-2 Zone

----- X

CONCEPTUAL RESIDENTIAL SITE PLAN

Date: October 7, 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
KENNETH MENNERICH
JOSEPH E. PROFACI
THOMAS P. FOGARTY (from 7:16 p.m.)
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVE: DOMINIC CORDISCO

----- X

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

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MR. PROFACI: Good evening, ladies and gentlemen. Welcome to the Town of Newburgh Planning Board meeting of October 7, 2010.

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

MR. GALLI: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. WARD: Present.

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

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh.

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

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MR. COCKS: Bryant Cocks, Planning Consultant.

MS. ARENT: Karen Arent, Landscape Architectural Consultant.

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

MR. PROFACI: Thank you. At this time I'll turn the meeting over to John Ward.

MR. WARD: Please stand to say the Pledge of Allegiance.

(Pledge of Allegiance.)

MR. WARD: If you have cell phones, please turn them off. Thank you.

MR. PROFACI: The first item on this evening's agenda is Conifer Realty, LLC, Fostertown Road at Wells Road, Section 39; Block 1; Lot 19 in the R-2 Zone. It's a conceptual residential site plan being represented by Dominic Cordisco.

MR. CORDISCO: Good evening, Members of the Board. I am Dominic Cordisco, for the record. I'm from the law firm of Drake, Loeb in New Windsor. We are here tonight to discuss the Planning Board's report and recommendation to the

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Town Board.

Earlier today, the Board Members may be aware, I did send a letter, an e-mail, to the Chairman. I have copies of it tonight. I completely understand that --

CHAIRMAN EWASUTYN: I circulated the copies.

MR. CORDISCO: Thank you.

CHAIRMAN EWASUTYN: For the record, it's a practice of the Planning Board that on a daily activity, any correspondence, whether it be e-mails or mail itself, that reaches the Planning Board office, copies are made for all Planning Board Members, to all consultants and to other responsible people who work for the Town. So again, that's been distributed.

MR. CORDISCO: I appreciate that, Mr. Chairman. I just would like to add that it's not our practice to provide letters at the last minute. We respect the Board as far as its procedures are concerned. In this particular instance we were given the courtesy of Mr. Donnelly's letter of last week, and since that time we've been reviewing and researching to

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2 respond because there are initial procedural
3 hurdles that have been raised. If it would help
4 the Board, I would like to go through the letter
5 at this time.

6 CHAIRMAN EWASUTYN: Go ahead.

7 MR. CORDISCO: All right. "On behalf
8 of Conifer Realty, LLC," and I should stop for a
9 moment.

10 Michelle, I have an additional copy
11 I'll give to you.

12 MS. CONERO: Thank you.

13 MR. CORDISCO: I'll try to go fast but
14 not be incoherent.

15 "On behalf of Conifer Realty, I write
16 to respond to the procedural hurdles raised by
17 Mark Taylor as set forth in Michael Donnelly's
18 September 30, 2010 letter. At the outset, we
19 believe that the issues raised by Mr. Taylor are
20 wrong as both a matter of law and as a matter of
21 practice -- by which we mean that other projects
22 before the Town have been processed and treated
23 differently. We can only surmise that the
24 changes in process are not due to technical
25 issues regarding the application, but are hurdles

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2 to delay and prevent the availability of
3 affordable housing in the Town of Newburgh.
4 SEQRA: As an affordable housing project under
5 Town Zoning Law, Section 185-47, Fostertown
6 Landing requires the Town Board's authorization
7 in order for the Planning Board to continue its
8 review of this application. In similar
9 applications for other affordable housing and
10 senior housing developments (where the zoning law
11 is identical in terms of process), the Planning
12 Board has initially considered the sketch plan
13 for the development and then referred the
14 application to the Town Board for the Town
15 Board's authorization to continue to process the
16 application. Only after the application has
17 returned from the Town Board has the Planning
18 Board continued its review, completed SEQRA, and
19 then made a decision. Indeed, this was the
20 process followed by both the Planning Board and
21 the Town Board as recently as June of this year
22 for the Golden Vista project. For Golden Vista,
23 the issue of SEQRA impacts came up during the
24 Planning Board's discussion of its report to the
25 Town Board. The Planning Board determined to

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2 complete its SEQRA review if and when the project
3 came back from the Town Board. For its part, the
4 Town Board granted its authorization to continue
5 to review Golden Vista without raising this
6 issue. Now, just three months later, Mr. Taylor
7 informed Mr. Donnelly that the Planning Board's
8 referral of this matter to the Town Board cannot
9 occur until after the completion of SEQRA. This
10 is incorrect. The Planning Board's referral of
11 this matter to the Town Board is not an action
12 under SEQRA. SEQRA requires environmental review
13 of actions, and actions are defined as one or
14 more new or modified approvals from an agency or
15 agencies." I provide the citation. "Here, the
16 Planning Board's report -- and even the Town
17 Board's authorization -- are not approvals as
18 neither convey any vested right to the applicant.
19 A property owner acquires vested rights when,
20 pursuant to a legally issued permit, he
21 demonstrates a commitment to the purpose for
22 which the permit was granted by effecting
23 substantial changes and incurring substantial
24 expenses to further the development," and I
25 provide the citation. "Neither the Planning

1 Board's report -- nor the Town Board's
2 authorization to the Planning Board to continue
3 its review -- amount to an approval as both SEQRA
4 review and the Planning Board's deliberative
5 decision-making process have yet to be concluded.
6 If the Planning Board's report and the Town
7 Board's authorization are actions, then they are
8 Type II actions not subject to any further SEQRA
9 review as they fall within the following Type II
10 description: An agency, engaging in review of any
11 part of an application to determine compliance
12 with technical requirements, provided that no
13 such determination entitles or permits the
14 project sponsor to commence the action unless and
15 until all requirements of this part," meaning
16 SEQRA, "have been fulfilled," and I provide
17 citations there's as well as to a number of cases
18 that support that position. "As a result, no
19 determination of significance is required prior
20 to the Planning Board's report, nor prior to the
21 Town Board's authorization. If the Town Board
22 authorizes the continued review of this
23 application for affordable housing, then the
24 Planning Board will need to make a determination
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1 of significance prior to deciding whether to
2 grant preliminary site plan approval. Unit size:
3 We have acknowledged that the individual unit
4 size on the current plans slightly exceed the
5 size limitations set forth in the Town's Zoning
6 Law." By slightly, I believe the differences are
7 35 square feet and 50. "As we previously
8 indicated, the current plan is based on Conifer's
9 often-used design. We have previously stated on
10 the record that we will modify the plans to meet
11 the Town's requirements, even though the unit
12 size will be made smaller. If the application
13 receives Town Board authorization, the plans will
14 be revised prior to any further action by the
15 Planning Board. We will not seek a waiver nor
16 variance on this issue, as none will be required.
17 Market Rate Units: Solely as a response to the
18 objections raised by its neighbors, Conifer
19 reduced the number of affordable housing units
20 from 66 to 22. Now, Mr. Taylor opines that
21 affordable housing multi-family dwelling units
22 are not allowed in the R-2 Zoning District.
23 However, this is contrary to a plain reading of
24 the Town's Zoning Law, which clearly states that
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1 affordable housing units (detached, attached,
2 semi-attached or multiple-dwelling units) may be
3 allowed at increased density levels in the R-2,
4 R-3, B and IB Districts as follows: In the R-2
5 District, four dwelling units per acre," and I
6 provide the citation. "This is consistent with
7 the stated intent of the Town's affordable
8 housing provisions, which were adopted in order
9 to provide a choice of housing opportunities for
10 a variety of income groups within the Town," and
11 I provide a citation. "To follow Mr. Taylor's
12 position here would effectively gut the Town's
13 affordable housing law, as only the housing types
14 already allowed in the underlying zoning district
15 would be allowed as affordable. In that case,
16 however, there would be no choice of housing
17 opportunities as the only housing choice would be
18 only that already allowed in that zone. To that
19 end, there would be no benefit to affordable
20 housing, as an applicant may just as well build
21 market-rate units. To the extent that there is
22 any suggestion of ambiguity here, the law
23 requires that zoning restrictions, being in
24 derogation of common-law property rights, should
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2 be strictly construed and any ambiguity resolved
3 in favor of the property owner," and I provide
4 the citation. "Furthermore, when statutory
5 language is clear and unambiguous, it should be
6 construed so as to give effect to the plain
7 meaning used. Indeed, both the Planning Board's
8 Consulting Engineer and Planner have acknowledged
9 that both the original Conifer proposal for
10 multi-family affordable housing and also the
11 reduced affordable housing plan meet the Town's
12 zoning requirements," and I refer to their memos
13 to that effect. "It was clear to them, and it is
14 clear to us, that multi-family dwelling units are
15 allowed in the R-2 Zone as part of an affordable
16 housing project. Lastly on this issue, if the
17 Town determines that a ZBA interpretation on this
18 issue is required, Conifer intends to resolve it
19 by reverting to a totally affordable multi-family
20 development, which is unequivocally allowed in
21 the R-2 Zone.

22 Public Hearing: Mr. Taylor suggests
23 that the Planning Board hold a public hearing
24 prior to making its report to the Town Board.
25 Conifer has already conducted two informational

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2 meetings, which were noticed in the same manner
3 as a public hearing. Both of these sessions were
4 well attended -- and both of these sessions led
5 to significant changes in the project to
6 accommodate, to the extent possible, the concerns
7 expressed by neighbors of the project. The
8 Town's affordable housing law does not require,
9 nor does it authorize, the Planning Board to hold
10 a public hearing prior to making its report to
11 the Town Board. Given that there has already
12 been an ample opportunity for the public to
13 comment on this project, we fail to see the
14 benefit of holding a public hearing at this
15 juncture. Additional public comment may be
16 warranted if this project continues and the site
17 plan is further developed.

18 Conclusion: At the last Planning Board
19 meeting, the Board instructed its consultants to
20 advise the Board regarding the suitability of
21 this site for designation as affordable housing.
22 We look forward to the Board's discussion, report
23 and recommendation on this issue."

24 I'd like to thank you for giving me the
25 opportunity to put that in the minutes of the

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meeting.

CHAIRMAN EWASUTYN: And how would you like to begin now?

MR. CORDISCO: If the Board sees fit, I think perhaps the Board would perhaps receive the advice of its Counsel. We have Mr. Taylor's opinion regarding the procedural matters, we have the Board's past practice, and of course you've heard from me. So I think at this point it would be helpful if the Board would decide how it would like to proceed.

There are several different options. If the Board follows the issues laid out in Mr. Donnelly's September 30th letter, then the Board would be considering whether or not to adopt a SEQRA determination of significance at this point. We believe that that's inconsistent with both the law and this Board's past practice. So I think that that's the first issue that the Board has to discuss.

CHAIRMAN EWASUTYN: Okay. Mike Donnelly, Planning Board Attorney, in response to Dominic Cordisco's letter dated October 7, 2010, please.

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2 MR. DONNELLY: Dominic's letter, as he
3 said, was in response to my earlier letter to
4 you. We discussed the contents of that letter a
5 little bit at work session. I'm not going to
6 rehash all of it. I think we've had a chance to
7 digest it.

8 On the issues that were raised as
9 potentially unclear by Mark Taylor regarding unit
10 size and how to handle the non-affordable, for
11 want of a better term, units in terms of the
12 allowable housing type, I don't think either of
13 those need to be resolved before you issue any
14 kind of report or recommendation to the Town
15 Board, other than to flag them as potential
16 issues that ultimately need to be resolved.

17 On the issue of how to handle SEQRA, I
18 think you do need to do something. First as to
19 the Golden Vista project which Dominic has raised
20 as a project where we handled the issue
21 differently than he thinks we're outlining it
22 now, I point out that was a project that had
23 already had SEQRA review, had been approved, and
24 what came to the Board was a request to reduce
25 the number of units and to make some of those

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2 units affordable. Therefore, since SEQRA is only
3 done once, we would have needed to be assured
4 that there was no additional, or new, or
5 different environmental impacts, but it didn't
6 require the initial SEQRA compliance that I
7 outlined in my letter that I believe this project
8 may require.

9 With that said, what I had said to you
10 in the letter, and what I recommend you do this
11 evening after you hear from your consultants is
12 decide how you want to handle SEQRA. I don't
13 disagree with Dominic that you can consider your
14 own report and recommendation, if you're
15 satisfied that you have all of the information
16 you need to make that report and recommendation
17 to the Town Board, as one that requires SEQRA
18 compliance first. Meaning you could consider it.
19 I think it would be valid as a Type II
20 preliminary, non-binding recommendation to the
21 Town Board, much as a sketch approval would be in
22 other context. That doesn't mean that you have
23 to do that this evening if you're not satisfied
24 but that you would be able to do so. However, I
25 do believe that the determination by the Town

1 Board to grant an authorization to you after
2 receiving your report and recommendation to allow
3 the affordable housing density bonus on this site
4 would be an action under SEQRA, and would be one
5 that requires SEQRA compliance first.
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7 As I outlined in my letter, when we
8 look at the rationale, what SEQRA is trying to
9 avoid is where a single project or action has
10 multiple components, SEQRA tries to avoid any one
11 of those component pieces being finalized before
12 the environmental review has been done, and the
13 rationale is that to allow it to happen might
14 well make the outcome of the entire process
15 already determined. For instance, if the Town
16 Board, before SEQRA was done, granted you the
17 authorization to allow the affordable housing to
18 be applied to this particular site, then all that
19 would be left would be for you to review the site
20 plan and its environmental impacts, I don't mean
21 to minimize that. But you would not have had, or
22 the Town Board would not have had the opportunity
23 to either see those environmental impacts fleshed
24 out or have received from you, as lead agency,
25 the assurance that there would be no

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2 environmental impacts through issuance of a
3 negative declaration.

4 So while you could act on your report
5 and recommendation this evening if you were
6 satisfied you had sufficient information, you do
7 need, at some point, and if there is no more
8 information coming this would be that point, to
9 issue a declaration of significance. I outlined
10 three potential declarations you could issue. If
11 you were comfortable, after hearing the advice of
12 your consultants, that there were no significant
13 adverse environmental impacts that would flow
14 from this project, you could issue a negative
15 declaration. You could then issue your report,
16 the Town Board would act, and then it would be
17 returned to you with an authorization. If it
18 did, you could then review the site plan. Your
19 second choice, if you determine that there are
20 any potentially significant adverse environmental
21 impacts that might flow from this project, would
22 be to issue a positive declaration, which would
23 then lead to the preparation of an environmental
24 impact statement and the procedures you're
25 familiar with when that happens. A third choice,

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2 not to complicate matters, would be if there were
3 a number, I would think a relatively small number
4 of easily solvable environmental impacts that had
5 conditions and mitigation measures that you would
6 announce that would satisfactorily handle them in
7 advance, you could issue a conditioned negative
8 declaration identifying those impacts, attaching
9 conditions and announcing, if appropriate,
10 mitigation measures to ensure they were taken
11 care of before site plan review was finalized.
12 Those would be your three choices.

13 I think you need to hear from your
14 consultants as to whether or not they see any
15 outstanding issues that need resolution, and
16 certainly you need to hear from your consultants
17 regarding their recommendations regarding any
18 recommendation you might wish to issue.

19 MR. CORDISCO: Mr. Chairman, I'd like
20 to respond briefly, if I may, regarding Golden
21 Vista.

22 CHAIRMAN EWASUTYN: I'm going to say
23 yes, but I realize where this is going back and
24 forth and I like to, at this point -- I asked you
25 what you'd like for me to do. What you suggested

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2 was I refer to Mike Donnelly, which politely I
3 did do so. Mike Donnelly has the floor. He works
4 for the Planning Board, he works for the Town.
5 He is now suggesting that we refer this to our
6 consultants. So having allowed you the
7 opportunity, politely, to read your letter, which
8 has happened, having Mike Donnelly having had the
9 opportunity to speak, he now advises the Planning
10 Board to hear from their consultants. I would
11 ask you to permit us to follow what Mike Donnelly
12 is suggesting.

13 MR. CORDISCO: Of course. I have utmost
14 respect for Mr. Donnelly. As a result, I
15 respectively disagree with him on one key point.

16 CHAIRMAN EWASUTYN: And we'll give you
17 that opportunity.

18 MR. CORDISCO: Thank you.

19 CHAIRMAN EWASUTYN: But we would like
20 to --

21 MR. CORDISCO: Of course.

22 CHAIRMAN EWASUTYN: -- work cordially.

23 MR. CORDISCO: Of course.

24 CHAIRMAN EWASUTYN: Thank you.

25 Pat Hines, Drainage Consultant?

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2 MR. HINES: Our most recent comments.
3 The recently submitted plans, pursuant to our
4 request at the last meeting, show an approximate
5 100 year flood plain boundary. The boundary is
6 relatively close to one or more of the units.
7 The actual flood plain boundary should be
8 depicted based on the Town of Newburgh's most
9 recent flood plain mapping, and reference to that
10 mapping is normally required on the plans. So
11 there is no base elevation for those and no
12 reference to the mapping there.

13 Our next comment has to do with we
14 previously asked the applicant, and they've
15 provided us, with a calculation regarding the
16 extent of the DEC regulated wetlands and the
17 associated buffer. The plans previously
18 submitted only had the area of the wetlands.
19 They have now provided the wetlands and the 100-
20 foot associated buffer area.

21 The project site is 17.52 acres. 10.62
22 acres of the project, approximately, are under
23 the jurisdiction of the DEC and/or the Army Corp
24 of Engineers.

25 In addition, there's a small part of

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2 the project in the 100-year flood plain, on the
3 most recent plans, not included in that. The
4 result is a net portion of the project not under
5 the jurisdiction of one of those agencies of 6.9
6 acres. We did a quick calculation. That shows
7 about 9.27 units per acre of that usable lot
8 area, and I know the Board was asking for that
9 information at the last meeting. So we clarified
10 that.

11 Our next comment has to do with Ken
12 Wersted's review of the traffic, and I know he'll
13 hit on that. There is a traffic circulation plan
14 showing some modifications on the most recent
15 plans, and we just ask for them to take a look at
16 that also with regard to passenger vehicles.
17 There was a single axle fire truck type vehicle.
18 Jerry Canfield will weigh in on that. They
19 didn't use the tandem axle type of vehicles that
20 could access that site. There may be an issue
21 with that outstanding also.

22 The plans right now are concept-stage
23 plans. We don't have information regarding such
24 items as soil and sediment control, stormwater
25 management, any potential wetland impacts without

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2 a grading plan. The flood plain issue is
3 outstanding there. We don't have a grading plan
4 and we don't have water and sewer to do a full
5 environmental analysis of the components of the
6 project at this point. We have the concept plan
7 that you have before you, so that's what our
8 comments are based on.

9 CHAIRMAN EWASUTYN: I would like to
10 stop for a minute. Let the record show that Board
11 Member Tom Fogarty has joined the meeting this
12 evening.

13 MR. HINES: That's the extent of our
14 comments.

15 CHAIRMAN EWASUTYN: Any comments from
16 Board Members at this point, or would they rather
17 wait to hear the consultants complete their
18 review?

19 MR. GALLI: Hear them complete it.

20 MR. FOGARTY: I'd rather wait.

21 CHAIRMAN EWASUTYN: Jerry Canfield,
22 Code Compliance?

23 MR. CANFIELD: As Pat said, and just to
24 echo Pat's comments, the plan that was submitted,
25 the traffic vehicular or circular plan took into

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2 consideration just a single axle fire truck. A
3 project of this caliber will require the response
4 of a ladder truck. All of the ladder trucks in
5 the Town of Newburgh are all tandem axles, so
6 future submissions should incorporate that. I
7 have nothing else on the concept at this time.

8 CHAIRMAN EWASUTYN: Bryant Cocks,
9 Planning Consultant?

10 MR. COCKS: My first comment was with
11 regard to the usable area that Pat talked about,
12 so I'll skip over that.

13 My second comment was regarding the
14 affordable units and whether they'll be placed on
15 the plan. The applicant is showing either two or
16 three affordable units per building in each of
17 the buildings, so they spread them out. I
18 believe that that will prevent a negative
19 perception, having all of the affordable units in
20 one or two.

21 The applicant also provided a full
22 sidewalk connecting all the buildings on the
23 site. I would also just suggest connecting the
24 last building closest to Fostertown Road to the
25 road so that if there is a crosswalk across to

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the school, that there will be a connection.

The applicant stated that the fire hydrants and the mailboxes will be added as the full site plan is submitted.

I'm also suggesting a bus stop area be shown for the school children who will not be attending the Fostertown Elementary School.

Other than that, they've addressed all our previous comments regarding the conceptual plan.

I did also have the turning radius comments Pat had, so I'll skip over that.

Other than that, they've addressed everything that we've asked for.

CHAIRMAN EWASUTYN: Karen Arent, Landscape Architect?

MS. ARENT: With regard to SEQRA review, the land use pattern of the development is more urban in character than the surrounding properties. To minimize visual and community character impacts, the project must be adequately screened from Fostertown and Wells Roads and other surrounding properties. Proposed screening must be immediate -- both immediate and long

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2 lasting. The consultant must then demonstrate
3 that adequate screening and space exists to
4 provide the screening -- sorry. The proposed
5 screening must be both immediate, long lasting
6 and the consultant must demonstrate that there's
7 an adequate space in order to give the screening.
8 Screening of the site might be difficult on the
9 Arbelyn site and residence since the proposed
10 development is so close to the property lines.
11 Again, adequate screening is going to have to be
12 demonstrated.

13 I also have a question with regard to
14 this one. There's a buffer regulation, 185-21
15 (d)(3), that requires forty feet of screening
16 between single and multi -- forty feet of buffer
17 between single and multi-family dwellings, and I
18 don't know if it applies to this project or not.

19 Significant trees, both evergreen and
20 deciduous, exist along Fostertown and Wells
21 Roads. Preserving these existing trees would
22 help blend the project into the surrounding
23 community, mitigating some of the impacts of the
24 community character. So if you can -- the
25 consultant can demonstrate the grading for the

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2 units will be far enough away from the trees so
3 they survive, that might help the project blend
4 better into the community.

5 And grading is going to be an important
6 element to evaluate screening and tree
7 preservation. So in order to completely evaluate
8 whether or not the project is adequately
9 screened, you need to see a grading plan.

10 CHAIRMAN EWASUTYN: Thank you. Ken
11 Wersted, Traffic Consultant?

12 MR. WERSTED: We don't have any
13 additional comments on the off-site traffic. The
14 only outstanding ones relative to the site
15 accesses are the sight visibility and the
16 crosswalk.

17 And then also following up on Pat and
18 Jerry's comments regarding the fire truck access
19 through the southern end of the site.

20 Other than that, we don't have any
21 additional.

22 CHAIRMAN EWASUTYN: Dominic, do you
23 want to continue discussing --

24 MR. CORDISCO: Just briefly. Only in
25 responding to Golden Vista, an issue -- it

1 relates to the issue of timing, the timing of
2 your SEQRA determination. As I pointed out in my
3 letter, SEQRA applies to any new approval or
4 modified approval. Certainly the Board
5 understands that as well. When The Marketplace
6 comes before you with applications to amend its
7 prior approval, the Board undertakes a SEQRA
8 review to evaluate the difference between the two
9 plans. That issue actually came up regarding
10 Golden Vista, and I'd like to read, just briefly,
11 Mr. Mennerich raised the issue at the May 20th
12 meeting. "I guess the only concern I have in
13 comparing the senior project to the affordable
14 housing project as proposed is the environmental
15 work relative to school children and traffic that
16 might be different. That I guess would be
17 covered down the road." And then Mr. Donnelly
18 agreed with that. So what we're saying to you is
19 that it's premature to do a full SEQRA review at
20 this point, prior to your recommendation to the
21 Town Board, and certainly that's both as a matter
22 of law but as a matter of practice for this
23 Board, and as a practical matter as well, to
24 require us to develop the plans fully so that all
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2 environmental issues or issues in engineering are
3 addressed prior to even a referral to the Town
4 Board to find out whether or not we can continue
5 in the process would be a waste of time, and
6 money, and the Town's efforts as well.

7 CHAIRMAN EWASUTYN: Mike, would you
8 like to respond to that?

9 MR. DONNELLY: I don't know if a
10 continuous give and take and tit for tat is
11 necessary. I would say what is different only is
12 once SEQRA has been closed out, there is an
13 obligation to look at any potential new adverse
14 impacts that were not covered in the original
15 SEQRA application, and that's what we were
16 talking about, whether or not there would be any
17 different ones. You elected to handle that at
18 the time of site plan review. The site itself,
19 the layout, all of the other issues about the
20 site and its ability to handle the project had
21 already been addressed. Maybe the difference is
22 subtle but I think it's a real one.

23 CHAIRMAN EWASUTYN: Comments from Board
24 Members. Frank Galli?

25 MR. GALLI: The small portion of the

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outside wetlands areas, your flood plain, was that in the calculations for the 6.9?

MR. HINES: It was not.

MR. GALLI: It was not. That's all I have.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I guess in comparison with Golden Vista where there was an extensive Type I action, a full environmental review, it would seem like we should be doing the same with this project.

CHAIRMAN EWASUTYN: Okay. Joe Profaci?

MR. PROFACI: Just out of curiosity, there is absolutely no grading or topography work that's been done yet at all? No grading?

MR. HINES: The current plans that we have before us in concept have existing topography but no proposed grading or proposed topography.

MR. CORDISCO: Chuck May is here. He is our engineer and he's indicating --

CHAIRMAN EWASUTYN: He doesn't have any yet. It's a matter of record.

Tom Fogarty?

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MR. FOGARTY: I take a look at this whole area of 17.52 acres of which 10.62 acres are not buildable. I'm not convinced yet that this is the proper fit when you're going to have 9.27 units per acre in this area. That's what I have to see in order to be convinced that this is the proper spot for this project.

MR. CORDISCO: On that particular issue, if the Board would like, Mr. Turner is prepared to address the suitability of the site regarding affordable housing.

CHAIRMAN EWASUTYN: At this point I'll turn to John Ward.

MR. WARD: I have no comment at this time.

CHAIRMAN EWASUTYN: I think what I'm going to do is I'm going to poll the Board now to see if they feel they're satisfied that they have enough information to make a recommendation to the Town Board.

Frank Galli?

MR. GALLI: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No.

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CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: No.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No.

CHAIRMAN EWASUTYN: Okay. As we said earlier, Mike Donnelly outlined three possibilities for a SEQRA determination.

At this point I'm going to move for a motion to declare a positive declaration and to set the 4th of November for a public scoping.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

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CONIFER REALTY

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MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

MR. CORDISCO: Understood.

CHAIRMAN EWASUTYN: Thank you.

MR. CORDISCO: Thank you very much.

MR. TURNER: Mr. Chairman, can I just ask one question? In terms of the scoping, will your consultant draft the scope? Will the applicant draft the scope for the public scoping? I'm not sure how you want to proceed with that.

CHAIRMAN EWASUTYN: Pat Hines, Bryant Cocks?

MR. HINES: We've done that both ways. Typically the applicant's representative will submit a draft scope and then that will be used as a basis for the rest of the consultants to suggest a final scope to the Board to utilize, and then there will be a public scoping session. So that input will also be incorporated into there as appropriate.

CHAIRMAN EWASUTYN: At this point you've heard from Pat Hines. Is the Board in agreement that the applicant could prepare a

1
2 draft scope for our consultants to review and
3 then add to or modify?

4 MR. GALLI: Yes.

5 MR. MENNERICH: Yes.

6 MR. PROFACI: Yes.

7 MR. FOGARTY: Yes.

8 MR. WARD: Yes.

9 MR. CORDISCO: If I may just outline.

10 The actual SEQRA regulations provide that the
11 applicant submits a draft scope that then gets
12 reviewed by the Board. That would be our
13 preference, would be for us, if we were going to
14 proceed, to prepare the draft scope, submit it to
15 the Board, the Board will have a full opportunity
16 to comment on it, the Board's consultants will
17 have an opportunity to comment on it and make
18 changes, and then the final scope is the scope
19 that gets adopted by this Board. So if there's
20 something that's missing, this Board puts it in,
21 and the Board will have plenty of opportunity to
22 do that. The scope should be drafted, and the
23 regulations provide that it's drafted, by the
24 applicant.

25 CHAIRMAN EWASUTYN: Okay. For the

1
2 education of the public here this evening; Mike
3 Donnelly, would you outline then the meaning and
4 purpose of a public scoping session?

5 MR. DONNELLY: I didn't bring our
6 regulations fully, but I think Dominic may well
7 be correct on the procedure. The idea of a
8 public scoping is a positive declaration means
9 that the Planning Board is going to require the
10 applicant to prepare an environmental impact
11 statement, which is a study of the potential
12 environmental impacts of this project. The scope
13 is effectively the table of contents of that
14 impact statement, what it must address. The
15 concept of public scoping is after the applicant
16 has set forth its proposal, and with the help of
17 its consultants, the Planning Board has made a
18 tentative initial proposal of that scope, a
19 public hearing is held. The public is then
20 invited to address that scope. The subtle thing
21 is we're not asking you what you think the
22 answers are or what you believe the answers are,
23 but rather tell the Planning Board what you think
24 is missing or how what is listed needs to be
25 addressed.

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2 After that hearing is closed, the
3 Planning Board finalizes that scoping outline,
4 delivers it to the applicant, and the applicant
5 then prepares an environmental impact statement
6 that addresses the various issues that were
7 outlined in that scope, and then there's a
8 continuing process with a likely additional
9 public hearing, a preparation of a final impact
10 statement, a finding statement, so on and so
11 forth. That would be the upfront outline of
12 where we would go from here.

13 My question is if the applicant is
14 going to prepare that initial scope and you wish
15 to have some give and take, is that November 4th
16 date realistic?

17 MR. CORDISCO: It may not be. It may
18 not be.

19 CHAIRMAN EWASUTYN: Do you want to -- I
20 could make a motion to amend that motion and set
21 the date for -- let's see. That would be the
22 18th then.

23 MR. CORDISCO: What I would suggest is
24 actually you hold off on setting a date and allow
25 us, if we proceed, to submit a draft scope and

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the Board can review it, the consultants can review it and the Board can set a scoping session at that time.

MR. DONNELLY: That might be more manageable.

CHAIRMAN EWASUTYN: I'll make a motion to amend the motion of setting a public scoping session for the 4th of November until we receive a written letter from our consultants that they feel the completeness of the scoping document is ready to set for a public scoping session.

MR. WARD: So moved.

MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

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CONIFER REALTY

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CHAIRMAN EWASUTYN: Myself yes. So
carried.

MR. CORDISCO: Thank you all very much.
I appreciate the courtesy.

(Time noted: 7:35 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: November 1, 2010

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

----- X
In the Matter of

GARDNERTOWN ROAD & MAURICE DRIVE SUBDIVISION
(2010-20)

Gardnertown Road & Maurice Drive
Section 74; Block 3; Lot 3
R-3 Zone

----- X

CONCEPTUAL
TWO-LOT SUBDIVISION

Date: October 7, 2010
Time: 7:35 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

----- X

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

1
2 MR. PROFACI: The next item on
3 tonight's agenda is Gardnertown Road and
4 Maurice Drive Subdivision. It's on
5 Gardnertown Road and Maurice Drive, Section
6 74; Block 3; Lot 3.0, located in the R-3
7 Zone. It's a conceptual two-lot subdivision
8 being represented by Lawrence Marshall.

9 MR. MARSHALL: This is a proposed two-
10 lot subdivision on the corner of Gardnertown Road
11 and Maurice Drive. The current lot is .881
12 acres. We propose to subdivide it into two lots,
13 one of those lots accessing Gardnertown Road, the
14 other lot accessing Maurice Drive.

15 The proposed lots would be served by
16 public water and private sewage disposal systems.
17 The sewage disposal systems have been tested and
18 designed.

19 In addition to that, there are a great
20 number of trees in the area. It's really a
21 manicured lawn at this point with a large amount
22 of trees that are located along Gardnertown Road
23 and Maurice Drive. We've located those existing
24 trees and shown them on the plan, and, to the
25 greatest extent possible, designed the locations

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2 of the driveways, the sewers and the houses to
3 accommodate the removal of as few of those trees
4 as possible. I think that's about it.

5 It's in the R-3 Zoning District.

6 CHAIRMAN EWASUTYN: Jerry Canfield,
7 Code Compliance?

8 MR. CANFIELD: We have nothing. We had
9 discussed at the work session, and I think Pat
10 will bring up our comments.

11 CHAIRMAN EWASUTYN: Pat Hines, Drainage
12 Consultant?

13 MR. HINES: I took the opportunity
14 before the work session to take a look at the
15 plans. The title had me stumped a little bit.

16 Just a couple of suggestions. The lot
17 that fronts on Gardnertown Road, you're showing
18 the water line coming across Gardnertown Road,
19 and we're suggesting maybe use Maurice Drive
20 because that traffic cut with the traffic on
21 Gardnertown Road will probably be much easier off
22 of Gardnertown Road. If that can be brought in
23 off there.

24 There's a note on the map, I think it's
25 note 4, that references this lot. The name is

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2 A-N-G-O, Ango Reserve. I just wanted to make
3 sure this wasn't some kind of easement or
4 restricted lot from that subdivision in 1954. I
5 don't know if they did that in 1954.

6 MR. MARSHALL: Would you like us to
7 provide you a copy of the map?

8 MR. HINES: I'm just wondering what
9 reserve meant, whether it was supposed to --

10 MR. MARSHALL: I'm not sure. I'd have
11 to take a look at the --

12 MR. HINES: Make sure there's no deed
13 restrictions that are in place to screen the rest
14 of the subdivision. The note caught my eye and I
15 don't know what it means.

16 The lots are relatively flat with the
17 septics kind of in the highest point of the lot.
18 There's a two-foot elevation difference across
19 the lot. We're suggesting to put finished floor
20 elevations on the houses and lowest suitable
21 elevations. Obviously there's not going to be
22 any sewer in the basements of these because of
23 the grading of the lots.

24 The other comment is there's a project
25 across the street that has, I think, conditional

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2 final approval for a condominium project, and we
3 wanted to show the location of that entrance
4 drive relative to the Gardnertown Road access
5 drive you have.

6 MR. MARSHALL: That's located across
7 Gardnertown?

8 MR. HINES: It might be right across
9 from the driveway, which I think would be good.
10 We just want to see that relative to the rest.
11 Gardnertown Commons is the project. If you call
12 me I can send you a photocopy of where that lays
13 out.

14 That's all we had on this. Otherwise,
15 the septic have really good perc's there and it
16 has Town water, so we don't have any other
17 concerns.

18 CHAIRMAN EWASUTYN: Bryant Cocks,
19 Planning Consultant?

20 MR. COCKS: Just a note that both lots
21 meet all the zoning requirements and no variances
22 will be necessary.

23 As Larry mentioned, they did a very
24 good job preserving the on-site trees and placing
25 the driveways and the house locations so there

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will be no grading and tree removal.

There is a Central Hudson easement going through lot 2 that has a chain-link fence that is owned by the neighbor of the property, so I was asking Mike Donnelly just to review what that would mean since the fence is on this property, and if there's going to be any kind of variance necessary.

The owner is just going to need to sign the owner's consent note.

This is an Unlisted action under SEQRA. No outside agency approvals are required. It's not within 500 feet of a County roadway, so Orange County Highway Department approval won't be required either.

CHAIRMAN EWASUTYN: Mike, in reference to Bryant's comment --

MR. DONNELLY: My position is that you should, at the time of any approval you grant, include a condition that notes the encroachment and states that you do not approve of it, it exists already, and leave to the applicant and their neighbor the private agreements that might exist. We have no reason or authority to compel

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that it be fixed.

CHAIRMAN EWASUTYN: Planning Board
Members. Frank Galli?

MR. GALLI: No additional.

MR. MENNERICH: No questions.

MR. PROFACI: Lawrence, I noticed
through the years, from time to time, standing
water on that property. Do you know if there's
-- I believe someone mentioned there's a culvert
at some point. Do you know whether that culvert
is clogged or filled? Could that be the reason
for that?

MR. MARSHALL: There is a culvert that
crosses Gardnertown Road --

MR. PROFACI: That's about where the
water usually is collected.

MR. MARSHALL: -- just to the east of
the proposed entrance for lot 1.

MR. PROFACI: Yup.

MR. MARSHALL: We can certainly -- I
have been out on the site several times. I have
noted the location of the culvert but I have not
inspected it. I can certainly go out and take a
look at it to see if any maintenance is necessary

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on either side of the pipe.

MR. PROFACI: I would strongly suggest that.

MR. MARSHALL: Okay.

MR. PROFACI: Thank you.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no comments.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: No comments.

CHAIRMAN EWASUTYN: I'll make a motion that will have three parts to it. One, that we grant conceptual approval for the two-lot subdivision for Gardnertown and Maurice Drive; that we declare a negative declaration for that application; and that we set the 4th of November for a public hearing.

MR. PROFACI: So moved.

MR. FOGARTY: Second.

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

(No response.)

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

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MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So carried.

Lawrence, on the Tuesday before the actual meeting, would you make it a point of getting the certified return receipts to Bryant Cocks so he can review them? At the same time, if you work with Bryant Cocks, our Planning Consultant, as far as whatever information he needs. We'll provide you with a mailing list from the Town assessor's office.

MR. MARSHALL: Great. I just have one question for Mr. Donnelly. Would you like to see the easement that Central Hudson has? Bryant had noted that.

MR. DONNELLY: It certainly can't hurt. What Bryant was raising was the fence that's on the property line, that's an encroachment, and how to handle that. I certainly wouldn't mind looking at the easement.

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GARDNERTOWN ROAD/MAURICE DRIVE

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MR. MARSHALL: Sure. I'll send it
over.

Thank you.

(Time noted: 7:45 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: November 1, 2010

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

----- X

In the Matter of

ROUTE 9W GAS & CONVENIENCE STORE
(2009-14)

Route 9W and Carter Avenue
Section 27; Block 2; Lot 25
B Zone

----- X

SITE PLAN

Date: October 7, 2010
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
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: GREGORY SHAW

----- X

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

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2 MR. PROFACI: The next item on
3 tonight's agenda is Route 9W Gas and Convenience
4 Store, Route 9W and Carter Avenue, Section 27;
5 Block 2; Lot 25, located in the B Zone. It's a
6 site plan being represented by Greg Shaw.

7 MR. SHAW: Thank you. For the record,
8 my name is Greg Shaw from Shaw Engineering. With
9 me tonight is also Jerry Bergman from Clough,
10 Harbour Associates.

11 This is probably our second trip back
12 to the Board. We left this Board I think six
13 weeks ago where the Board took a thorough review
14 of the project and we received your consultants'
15 comments.

16 Maybe the best place to start is back
17 in March of this year we received a variance from
18 the Zoning Board of Appeals to allow a fuel
19 dispensing facility within 1,000 feet of an
20 existing fuel dispensing facility, that being the
21 Stewart's Shops. Following that, as we developed
22 the site plan, what we're proposing is a 6,900
23 square foot convenience store. Along with that,
24 a canopy containing eight fuel dispensing
25 islands.

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2 For the customers' benefit and also for
3 the employees, we're providing 56 spaces
4 throughout the site.

5 Our primary entrance will be at the
6 intersection of Route 9W and Carter Avenue.
7 We're also proposing a right-turn in, right-turn
8 out to the north of that intersection, again for
9 the convenience of the customers. We recognize
10 that we're going to have to obtain a permit from
11 the New York State DOT for those improvements.
12 And also, there will be a widening of Route 9W to
13 allow left-hand turns into the site for traffic
14 heading in a southerly direction.

15 The property is in the B Zone. We butt
16 up against an R-1 Zone. We were obligated to
17 comply with the buffer and setback requirements,
18 which we have done. So we're in compliance in
19 that respect.

20 The project will be tied into Town
21 water. The building will be sprinklered.

22 With respect to the sewage disposal
23 system, we will require a permit from the New
24 York State DOT -- excuse me, DEC for the sanitary
25 discharge from the new facility.

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2 With respect to stormwater, we have
3 prepared a SWIF, and I believe it's been accepted
4 by your Board's consultants. With that, we've
5 proposed underground detention and also a
6 subsurface sand filter to treat the stormwater
7 prior to discharge into the State system.

8 Of course, you know, the two permits we
9 need from the DOT is not only for the entrances
10 but also for the utility hookups.

11 So that is a brief overview. I believe
12 we've responded to your consultants' comments.
13 Maybe there's a few outstanding items.

14 If the Board, you know, feels that the
15 project has advanced far enough along, we'd be
16 asking for a conditional final site plan approval
17 tonight. Thank you.

18 CHAIRMAN EWASUTYN: Thank you. Jerry
19 Canfield, Code Compliance?

20 MR. CANFIELD: We have nothing at this
21 time. Our previous comments have been addressed.

22 CHAIRMAN EWASUTYN: Pat Hines, Drainage
23 Consultant?

24 MR. HINES: The applicants have
25 modified the soil erosion and sediment control

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2 plan per our previous comments, adding a
3 temporary sediment basin prior to discharge to
4 the DOT culvert.

5 Notes were added to the plans regarding
6 the requirement for a demolition permit for
7 removal of the existing structures.

8 The sprinkler valves for the potable
9 system have been modified in compliance with the
10 Town's specifications.

11 I took the opportunity at work session
12 to describe that the applicants are wishing to
13 defer the actual design of the sewage treatment
14 system on the site until final approval is
15 granted due to, I believe, the existing economics
16 of these kinds of projects and the timeframe
17 involved in the DEC approval of that. They were
18 looking to defer that as a condition of final
19 approval. DEC has the jurisdictional authority
20 to approve that. It's not a Town approval that
21 could be granted anyway.

22 It does also need DOT approval for the
23 utility connection to their storm system.

24 I don't have any particular concerns
25 deferring that because it is an outside agency

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approval that they would have to bring back to the Board as a condition of final.

That's all we have.

CHAIRMAN EWASUTYN: Jerry Bergman, I believe you're working on the sewer.

MR. BERGMAN: Yes. I stated last time there is an existing SPDES permit. We're presently talking with the DEC about whether it will be an amendment to that permit or a new permit. It could be either. We're prepared to do either one. Once we get the new permit, then we'll do the design. As Mr. Hines said, that's exactly true. Mr. Rosenberg would rather not pay for the design of a new sewage treatment plan until he knows he's got a project. I'm being very honest.

CHAIRMAN EWASUTYN: Thank you.

Bryant Cocks, Planning Consultant?

MR. COCKS: Yes. We did receive a conceptual approval letter from the DOT. It did say the highway work permit will be required, as mentioned by Mr. Shaw.

We got our letter back from the Orange County Planning Department which gave a Local

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2 determination for the project. They did request a
3 revised EAF be submitted that addresses potential
4 impacts on underground fuel storage tanks and
5 lists any threatened and endangered species.
6 They did submit a revised page of the EAF which
7 stated there were no threatened or endangered
8 species from personal observation, but the DEC
9 website must be referenced on that.

10 The County is also asking for a copy of
11 the traffic study. I'm not sure why. They're
12 advisory comments and they aren't binding for
13 site plan approval.

14 The applicant did choose to defer the
15 landscape bond. They put the note on the plans.
16 They'll have to submit a certificate of
17 acknowledgement to Mike Donnelly before final
18 approval.

19 ARB approval and a comprehensive
20 signage plan will need to be reviewed by the
21 Planning Board at a later date.

22 Other than that, the applicant has
23 addressed all our previous site plan comments on
24 the layout. We have nothing further.

25 CHAIRMAN EWASUTYN: Karen Arent,

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Landscape Architect?

MS. ARENT: The consultant revised the grading to save some trees and rock outcrops along the Dara property.

No trees were added along the easterly property line as described because during the summer the views to the site from the property itself will be blocked by the existing buffer. And in the winter, from the house you won't really see the gas station because you're so high and far away from the edge of the embankment.

Crab apples in the parking areas were replaced with pear trees. Shade trees were added along Route 9W.

The proposed concrete block wall is gray in color, but that should be okay because there is a fair amount of landscaping in the front of that to soften it.

The consultant addressed all the comments.

CHAIRMAN EWASUTYN: Thank you. Everyone is kind of whispering tonight. Between Bryant Cocks and Karen, your voice tones have kind of dropped down a few decibels. If you can,

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maybe --

MR. HINES: I usually get accused of that.

CHAIRMAN EWASUTYN: Thanks. Ken Wersted, Traffic Consultant?

MR. WERSTED: I just have a few comments on the sidewalk for the area.

CHAIRMAN EWASUTYN: Excuse me for interrupting. When I was appointed Chairperson many, many years ago, Jerry Bergman, who I knew then, I don't know if you remember what you said to me. Jerry Bergman called me up and he said John, I'd like to congratulate you for a thankless job. So this is an example to this day. You're the only person I've ever met that was a hundred percent correct.

MR. BERGMAN: There you go.

CHAIRMAN EWASUTYN: Thank you.

MR. WERSTED: We just had a couple of minor comments on the sidewalk. The walkway across the site frontage should be increased to five feet.

The northern end of the sidewalk basically terminates away from the shoulder.

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That could be angled to bring pedestrians out to the road again.

The right in/right out island, if that can be cut out so that pedestrians can just walk through the center of that.

Then there's a couple of catch basins that are located right where the ramp comes down. If you can move the sidewalk with the catch basin, that will help the pedestrians.

That was basically it.

MR. SHAW: We don't have problems with any of that. The only thing I would ask is the four-foot sidewalk remain four feet wide, that's what we like to go in to the DOT for our permit, rather than increasing it to five feet. We don't don't feel five feet is necessary.

CHAIRMAN EWASUTYN: You always take those unusual positions of what's necessary and what isn't necessary.

MR. SHAW: It's not my money.

CHAIRMAN EWASUTYN: Okay. I'll poll the Board Members as far as the width of the sidewalk they would like to see.

Frank Galli?

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MR. GALLI: Four foot is fine.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I think we've required five every place. I would say five.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I'm fine with four feet.

MR. FOGARTY: Four feet is fine.

MR. WARD: Four foot is fine.

CHAIRMAN EWASUTYN: We'll go with four feet.

There's something that Mike Donnelly wants to add in reference to that sidewalk, is there not? A maintenance --

MR. DONNELLY: I was going to include a condition. Because part of it is in the DOT right-of-way, we're going to note the obligation to maintain it is going to remain with you. I don't mean you, Greg, but the applicant.

MR. WERSTED: My only concern with the width of the sidewalk is the ADA regulations. I'm not versed in it enough to know precisely what it is, but my general understanding is I think it needs to be five feet. It can go narrower in sections but you have to provide turnoffs so a

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`wheelchair can pull over and someone walk by them. That's my only concern with going with the four feet.

Your office, my office, we can look more into it and determine if that's --

MR. SHAW: If it turns out that the DOT mandates it, it's going to be five feet.

CHAIRMAN EWASUTYN: I think what he's also saying is I don't know of the compliance issue as far as ADA.

Jerry, do you have any input on that?

MR. CANFIELD: As far as the width, no.

MR. HINES: I believe what Ken said is true. If they're less than five feet you have to provide ever 300 feet or so a passby, a little turnoff pad for that.

CHAIRMAN EWASUTYN: Why don't we research that and make it in compliance.

MR. SHAW: Okay.

CHAIRMAN EWASUTYN: Any additional comments from Board Members?

MR. FOGARTY: Greg, has there been a signage plan developed?

MR. SHAW: No. We're going to have to

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provide that. That's going to have to be submitted to this Board as ARB approval as with the, you know, elevations of the building with respect to colors and textures and shapes and things of that nature. So no. We will be returning back with that.

MR. FOGARTY: Thank you.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: On the sewer treatment plant, would there be any features of that that would be aboveground --

MR. SHAW: No.

MR. MENNERICH: -- that would show up on the site?

MR. BERGMAN: The only thing that possibly may be aboveground is an electric box.

MR. HINES: Control panel?

MR. BERGMAN: Yeah.

MR. MENNERICH: Thanks.

CHAIRMAN EWASUTYN: Mike, the action before us this evening, please?

MR. DONNELLY: Yes. Site plan only because ARB will be reserved. I've prepared a resolution.

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2 We will need to include findings, and
3 this is something that was discussed before, that
4 grants a waiver from the guideline requirement
5 that the gasoline pumps be in the rear of the
6 site. My notes of your discussion reflect that
7 you were inclined to grant that waiver, the
8 rationale being the shape of this lot being wider
9 than it is deep would not make it possible to put
10 the pumps in the rear and to the sides, and that
11 adequately addresses the objective. Under the
12 circumstances, I have included language to that
13 effect.

14 In terms of the conditions, you'll need
15 a sign-off letter from Bryant Cocks in the
16 matters he just outlined. You'll need one from
17 Ken Wersted, and his will include the result of
18 the research on whether the sidewalk can be
19 reduced to four feet in width. We were including
20 language that authorizes the deferral of the
21 posting of the landscape bond until building
22 permit, but as noted there will be a
23 certification that you'll have to submit and
24 there will be a signoff. We'll reference the
25 Zoning Board of Appeals' decision of March 25th.

1 We're noting that the Code Compliance Department
2 has to issue a demolition permit for the
3 structures shown to be removed on the site. The
4 Orange County Health Department will have to
5 approve the grease trap. We note that the DOT has
6 given concept approval but that a highway work
7 permit will be required. In terms of the
8 sanitary sewage plant, we say the applicant must
9 present satisfactory plans and obtain a permit
10 from the New York State DEC for the sanitary
11 sewage plant design and for its discharge into an
12 existing culvert. The site plan shall not be
13 signed until a satisfactory plan is approved by
14 the Planning Board. I'm also going to note we
15 have a condition near the end of the resolution
16 that prohibits the construction of any buildings,
17 structures, appurtenances, facilities that aren't
18 shown on the site plan. That means you're going
19 to need to return, after you have that approval,
20 for a quick amendment to the site plan, if it's
21 satisfactory to the Planning Board, that will
22 show that additional structure that's not there
23 today. So it's going to require your return at
24 the time that you show us the plan. Next, we
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1
2 note that we're not approving any signs on the
3 plan. They'll have to be dealt with later. The
4 condition I mentioned earlier, that the portion
5 of the sidewalk shown as within the DOT
6 right-of-way will have to be maintained by the
7 applicant. We note that ARB approval is not
8 being granted at this time, and the applicant
9 will need to return to show the elevations and
10 renderings required. The requirement of a
11 landscape security and inspection fee. The
12 inspection fee appears to be in the amount of
13 \$2,000.

14 Is there a stormwater improvement
15 required here, Pat?

16 MR. HINES: Yes.

17 MR. DONNELLY: I thought so. And an
18 inspection fee. The condition I mentioned
19 earlier is the prohibition on the construction of
20 any amenity, accessory, structure or outdoor
21 fixtures, including mechanical units, except as
22 shown on the plan, and you'll need to address
23 that at the time you come back with your sanitary
24 sewer system approval. The remaining conditions
25 are the usual general conditions requiring sign

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off from Bryant Cocks.

MR. CANFIELD: Mike, one thing to add to that. There should be a soil erosion and inspection fee also.

MR. DONNELLY: Okay. That's separate from the --

MR. HINES: I think that is the stormwater inspection fee.

MR. DONNELLY: I'll have to look at the language, but I believe it is.

CHAIRMAN EWASUTYN: Any additional comments from our consultants? Pat Hines?

MR. HINES: No. I have nothing else.

CHAIRMAN EWASUTYN: Bryant Cocks?

MR. COCKS: Nothing further.

CHAIRMAN EWASUTYN: Karen Arent?

MS. ARENT: Nothing.

CHAIRMAN EWASUTYN: Ken Wersted?

MR. WERSTED: None.

CHAIRMAN EWASUTYN: Any comments from our Board Members as far as the resolution presented by our Attorney, Mike Donnelly, for conditional final approval?

MR. GALLI: No.

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MR. MENNERICH: No.

MR. PROFACI: No.

MR. FOGARTY: No.

MR. WARD: No.

CHAIRMAN EWASUTYN: Having heard the presentation from Mike Donnelly, Planning Board Attorney, for the Planning Board to grant conditional final site plan approval for the Route 9W Gas and Convenience Store outlined in the resolution that was presented, I'll move for that motion.

MR. FOGARTY: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by Tom Fogarty. 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. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

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CHAIRMAN EWASUTYN: Myself yes. So
carried. Thank you.

MR. SHAW: Thank you.

(Time noted: 8:05 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: November 1, 2010

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

----- X
In the Matter of

MID-HUDSON MARINA
(2010-19)

River Road
Section 121; Block 2; Lot 1
R-1 Zone

----- X

CONCEPTUAL RESIDENTIAL SITE PLAN

Date: October 7, 2010
Time: 8:05 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
KENNETH MENNERICH
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: CHRIS VIEBROCK

----- X

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

1
2 MR. PROFACI: The next item on
3 tonight's agenda is Mid-Hudson Marina on River
4 Road, Section 121; Block 2; Lot 1, located in the
5 R-1 Zone. It is a conceptual residential site
6 plan and it's being represented by Chris
7 Viebrock.

8 CHAIRMAN EWASUTYN: I'm going to do
9 something different this evening before you make
10 your presentation, if you don't mind.

11 MR. VIEBROCK: No.

12 CHAIRMAN EWASUTYN: Nick Cardaropoli,
13 the owner, is here. Would you mind presenting
14 your project to us first?

15 MR. CARDAROPOLI: I wouldn't mind.

16 CHAIRMAN EWASUTYN: Thank you ever so
17 much. I think it's always more pleasant to hear
18 your vision of the property and then the engineer
19 and his technical. More often than not, I find
20 sitting here, the applicant is sitting in the
21 audience and is represented. You have kind of a
22 heart and soul for the project, and I'd like to
23 hear from you.

24 MR. CARDAROPOLI: I have a couple of
25 things in case you had any questions. You see

1
2 his map? This was the map that I showed the Town
3 Board awhile back. I think it's only fair that
4 you see this.

5 CHAIRMAN EWASUTYN: For the record
6 would you give your name?

7 MR. CARDAROPOLI: My name is Nick
8 Cardaropoli Senior. Most people think I'm junior
9 but I'm not. I'm the father.

10 It's two different lots. There was an
11 approval -- let me start from the beginning. I
12 can show you this. There was approval for a
13 restaurant and so many slips that it was really
14 -- you can pass that down and they can see it --
15 200 and some, which was approved but very hard to
16 build and very ugly when it got done. You'd
17 probably need a traffic cop to identify the guys
18 that were drinking from the non-drinkers.

19 We changed it to 104 boat slips. This
20 will come to you at a later date because we're
21 separating it due to the economical situation we
22 have across our country. But this is 104. By
23 the time we get to you this will probably be
24 reduced again. If you would pass that down.

25 We had the great scheme, when we

1 presented it to the Town, of building like four
2 real castles. Sand Castle Homes is the name of
3 our company. We're currently doing a project in
4 Town now. We were going to make it --

6 CHAIRMAN EWASUTYN: Take your time.

7 MR. CARDAROPOLI: I put a lot of time
8 into this. This was my favorite because these
9 were real castles. Inside these castles we were
10 going to have the nice villas. You can't call
11 them condos. They have to be called villas
12 because villas usually sell for more money.
13 They're going to be nice. We did a lot of nice
14 work at Hilton Head over the years. I think we
15 were voted top 100 builders about fifteen years
16 ago in the country. We're the only builder in
17 the northeast and we're the only small builder,
18 which I kind of took -- you know, kind of helped
19 my grandfather and my father. We've been in the
20 business since the turn of the century, but no
21 one made any money until I took it over and
22 started it from scratch. They were the old skill
23 types that took a whole year to build a house and
24 then they sold it for \$14,000. Due to the
25 economic situation, we had planned to sell these

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2 for about \$900,000 to about \$1,200,000. We had
3 five or six people in the Balmville area that
4 wanted to move into these, sell their houses
5 because they live in Florida in the winter. It
6 could have been really grand.

7 Now we're going to calm them down.
8 They're still going to be three beautiful
9 buildings but they're not going to be so fancy on
10 the outside. They're going to be of quality, and
11 the units are going to be smaller. That's why we
12 went from twenty to twenty-four. Still the same
13 amount of square footage but a little smaller
14 units. That will fit in. They'll probably sell
15 from about maybe 500 to maybe 600. We seem to
16 have a half a dozen people that say they're
17 interested. We picked up some now that the price
18 came down.

19 The map will show you that the original
20 thing had the restaurant here and these were all
21 parking spaces. We came to the Town and we said
22 we're going to make all this green so that people
23 come up, being a boater myself, it looks onto
24 something decent rather than all blacktop. So the
25 Town Board really liked everything, and then the

1 State -- the Land Trust came along and said we're
2 giving you so much money for this, and I was
3 rather shocked because it was a lot of money.
4 And the State was going to come up with the
5 money. So we cleaned up everything, we knocked
6 down all the buildings, we cleaned up the water,
7 went and pulled out all the junk from over the
8 years in there, and then they didn't close, they
9 had no money. They said give us more time. This
10 February we were all set to close and they said
11 you have to take less money. We said okay, we'll
12 take less money, but we have to close in
13 February. In February they didn't have a penny.
14 The State has no money. They said can you wait.
15 We said we'll wait a little while. We're not
16 going to wait any longer. So now we're going to
17 go ahead and build it. We're not going to follow
18 those dreams that never came through. I think
19 the Town is more happy because now they're
20 getting ratables instead of just parkland.

21 That brings it up to where we hired
22 this engineering firm here. We interviewed
23 several and they seemed to be more in line with
24 what we were thinking . So I'm going to let him
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take it over now. Any questions, I'll gladly answer.

CHAIRMAN EWASUTYN: I'm glad I had the instinct. Thank you for your time. I find that most often it's the applicant himself who can unlock the doors that allow everyone to --

MR. CARDAROPOLI: I'm glad you gave me an opportunity. I've known you for a long time.

MR. GALLI: Just a question, sir. Where are you building homes now in the Town?

MR. CARDAROPOLI: We're building them on Lakeside Road. We have our model up and the first person that looked at it bought it. We have some other sales at good prices for now. I think my son did a good job in there. When I came home from Florida I was a little surprised that he put so much stuff in the house, but that's my son.

MR. GALLI: Make no money again; right?

MR. CARDAROPOLI: We get out of the land and I can start sleeping nights.

MR. VIEBROCK: For the record, my name is Chris Viebrock of the Chazen Companies.

Just to add on to Mr. Cardaropoli's

1 presentation and to provide a little more, and
2 also some stuff on the technical side of it.
3 This project, as you know, Mr. Chairman, has been
4 around since 1997. It was the findings statement
5 for the Anchorage -- I believe it was Anchorage
6 on Hudson.
7

8 CHAIRMAN EWASUTYN: That was my father,
9 it wasn't me. I'm junior.

10 MR. VIEBROCK: That consisted of a 21-
11 lot subdivision and a separate parcel which was
12 what you see right in front of you, the marina
13 parcel, but at the time, as Mr. Cardaropoli said,
14 this was proposed as a restaurant. In 2001 that
15 restaurant with 263 boat slips was approved. The
16 project did receive full approvals from the
17 Orange County Health Department, even the Army
18 Corp of Engineers for the boat slips. Mr.
19 Cardaropoli, they acquired the property and
20 that's when they came into the Town to get the
21 zoning amendment for an overlay district for this
22 plan here, what they would like to do with the
23 property.

24 The approvals still held on. They got
25 extension after extension, and that's kind of

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2 where we are right now. At this time we are
3 bringing this plan in front of you to just kind
4 of discuss the project, kind of bring everything
5 up to speed and try to discuss it with the Board,
6 discuss the issues. I received the consultants'
7 comments, appreciated the comments. I think
8 that's a good starting point for us is to address
9 those comments and try to, you know, get this
10 project -- get the bigger issues, get them out on
11 the table, address those issues and move forward
12 with this project along the way.

13 The main access from the site is from
14 Oak Street. I believe it's lower Oak Street they
15 call it. As I was reading through some of the --
16 we actually have the SEQRA. There was a
17 comparison done for the zoning overlay which was
18 done by Clough, Harbour. I can supply that. I
19 received a comment from Mr. Cocks asking for a
20 copy of that. No problem providing that copy. So
21 the access comes from lower Oak Street. There
22 was a traffic study done, supplementary to the
23 environmental impact statement.

24 It's my understanding I believe SEQRA
25 is completed for this plan here. We can discuss

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2 that with Mr. Donnelly and the consultant and try
3 to figure out where we're going to go with SEQRA.

4 Sewer and water. It's going to be on-
5 site septic. The percolation rates out here are
6 just phenomenal. It's a sandy gravel area there.
7 Percolations are in the area of four to six
8 minutes. Very fast percolations, which is great
9 for a project like this. The well that's out
10 there -- there's a well that's out there. It's a
11 sand and gravel well. A yield comes up right now
12 up to forty gallons per minute. For the extra
13 units we would probably most likely retest that
14 well, and maybe we can get more water out of it
15 to supply the units.

16 Fire protection will come from the
17 Hudson River. We're going to pump -- take water
18 out of the Hudson to use for fire protection on
19 the homes. That was the original intent all
20 along with the project.

21 Stormwater management, the original
22 proposal was to use an existing retention pond.
23 Since the Hudson River is a class IV, there is
24 the opportunity to discharge directly to that
25 without any quantity control, but quality control

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2 we will address on this project. That's
3 something that we'll work through the details as
4 we move along with the project.

5 I believe that's -- that should address
6 everything. This plan mimics the plan we had
7 presented and mimics what was on the zoning
8 change. Nothing significant.

9 Actually, some of the things we did
10 modify, some of the tweaks we did. Karen
11 mentioned a 48-inch tree that's out there. We
12 did note that. We're going to work around that
13 tree because it's a nice specimen. We will work
14 with that to try to get the road around it.

15 The only other change, too, is there
16 was -- there's an access that goes across. We
17 have to bring that access over in order to get to
18 the Hudson. Our intent right now is to build the
19 townhomes first and then the marina. We do need
20 to come over to this property in order to get to
21 the Hudson River to get the water for fire
22 protection. We're showing a very small minimal
23 access road to get over there, put the pump
24 station over there to get fire protection for the
25 site. I've already had conversations, I've

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2 reached out to CSX to get that easement. We
3 actually also have met with the Health Department
4 to discuss the project, bring them back up to
5 speed. Everything has been positive. There
6 hasn't been any -- a couple comments from the
7 Health Department that we're currently
8 addressing.

9 CHAIRMAN EWASUTYN: We'll start in the
10 back of the room with Ken Wersted, our Traffic
11 Consultant.

12 MR. WERSTED: I have a couple of
13 comments. I think the original project back from
14 '97 was looked at by my predecessor from our
15 office. I looked around for some files but I
16 couldn't find any readily available. I'm
17 somewhat getting up to speed on some of the
18 history of the project.

19 In any case, we had a couple comments.
20 I think some of them are reflected in some of the
21 other consultants' comments. One was regarding
22 the boat trailer storage areas, whether they're
23 intended to have boats and trailers stored there
24 or whether it's temporary parking. If there was
25 going to be a boat launch there, whether it's

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part of Phase I or phase II.

We had questions about the rail line, whether it's actively used. My understanding is it is. What is necessary to create that crossing from Phase I to phase II.

The parking lot has access at the southern end that continues over to Anchor Drive, and as it's shown on the plan right now, other than width, it really doesn't have any definition to it. So I can see somebody coming down there and just driving down thinking that they're somewhere else and they get to the end and there's a gate and they have to turn around. So there's probably some treatments that can be done there to highlight that difference and not encourage people to use it. A nature trail, you know, would be a nice little feature there that probably will allow you to get back on to the emergency access, a loop.

The parking table shows that Phase I was going to have 70 spaces associated with it, but by my count I believe there's about 103 proposed. That includes the spaces in front of the -- in the driveway, the garages, some surface

1
2 parking. So I think we just need some
3 clarification whether that parking lot was going
4 to be developed as part of Phase I. That was
5 pretty much the extent of my comments.

6 MR. CARDAROPOLI: You know, I'd like to
7 answer one of his questions because I was
8 involved in it. One of the reasons why, because
9 I lived on River Road and my son lives right in
10 front of that now, in Anchorage. One of the
11 reasons why we eliminated all of these boat slips
12 was to make bigger boat slips so it's not the
13 type people take in and out. We had three
14 parties -- information parties and we invited
15 everybody on River Road. We had wine and cheese
16 and Barbara --

17 MR. VIEBROCK: Corwin.

18 MR. CARDAROPOLI: -- Corwin, she gave
19 the presentation the first time. She did all the
20 ark work. She happened to do a very good job.

21 My concern, when I lived on River Road,
22 I didn't like all these trailers coming because,
23 you know, there's sharp turns. That's why we met.
24 There's not going to be storage or anything like
25 that. Those big boats have to be taken out and

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2 stored on their own. They take them out right
3 through the water. There could be a few but
4 they'll be taken out once a year and put in once
5 a year. They're not going to be going up and
6 down.

7 I think your parking, too, is taking
8 into consideration all the boat slips too, which
9 now is going to keep dropping, believe me.

10 MR. WERSTED: I guess, you know, that
11 somewhat answers the question. If the boat slips
12 are coming in phase II, is the parking intended
13 to be built in Phase I and just be empty?

14 MR. CARDAROPOLI: No. I wouldn't build
15 any parking.

16 MR. HINES: Right now your plans are
17 showing the parking being constructed. If we
18 approve this plan in this form, all that
19 parking --

20 MR. CARDAROPOLI: He'll have to discuss
21 that with the engineer and with my son because,
22 you know, I passed everything on, the decision
23 making.

24 It's going to be a gated community and
25 Karen can have quite a time because it's going to

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have to be very well landscaped coming in there.
We're looking for suggestions to make it very
attractive.

CHAIRMAN EWASUTYN: Karen Arent,
Landscape Architect?

MS. ARENT: One of the first things is
saving that big 48-inch American Sycamore tree.

CHAIRMAN EWASUTYN: Please speak up.

MS. ARENT: Sorry. I have a question
about the buffer regulation. If the townhouses
on this project are subject to the buffer
requirements as listed in 185-21? It basically
says that a 40-foot buffer between residential
uses and multiple-family dwellings and townhouses
is required. I don't really know if it applies
to the marina overlay district. It seems to but
I need Mike's help on that.

And then also in accordance with the
code, the Planning Board has discretion as to
whether or not reasonable screening of parking,
and service areas, and dumpsters should be
provided from public points of view, and
obviously one of the public points of view is the
Hudson River. We also have to consider Scenic

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Hudson and screening in accordance with some of their requirements.

CHAIRMAN EWASUTYN: Chris, do you have any knowledge how the buffer regulation was applied with the overlay district as you made your presentation to the Town Board?

MR. VIEBROCK: Actually, I did not make the -- my firm wasn't retained for the overlay district. That's knowledge I'm not sure about.

CHAIRMAN EWASUTYN: I think that's a fine point that needs to be explored early on.

Anything else, Karen?

MS. ARENT: That's it.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Along with the buffer requirements, me and Jerry were talking about the variances that are going to be necessary for this project. You did indicate that the gatehouse is going to require a variance for the front yard. The way Jerry is looking at it is that all three sides of that road are actually the front yard. So as you're showing the rear yard as having to be zero, actually that all right there is going

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2 to be front yard. You would have to receive
3 multiple variances for that.

4 MR. VIEBROCK: Would it help if -- one
5 thing I was going to try to submit was
6 documentation on the previous approved plan. It
7 would be my understanding that the previous
8 approved plan, that set the yards for the
9 property, that that should be what the yards are.
10 There was a previous variance actually granted
11 for, I believe it was -- there was another
12 structure with the restaurant. I know this is a
13 residential. What I'm probably going to do is
14 defer to our counsel and also Mr. Donnelly on how
15 that variance applies to the property. My
16 experience -- my understanding is that the
17 variance would carry with the property for life.

18 MR. DONNELLY: Unless it was limited in
19 the decision, I would agree. It was perhaps not
20 for the same building as you're proposing now. We
21 need to see the variance decision.

22 MR. VIEBROCK: Okay.

23 MR. DONNELLY: I don't know whether the
24 marina overlay district treats setbacks
25 differently but I know the Zoning Board, as they

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2 presently look at these issues, I've been to
3 their meetings, that would be a three front yard
4 variance situation. Similarly, a lot of those
5 other buildings are going to need front yard
6 variances.

7 MR. VIEBROCK: Okay. I'll have --

8 MR. DONNELLY: Maybe the decision will
9 explain to us how they looked at it back then. I
10 don't know.

11 MR. VIEBROCK: Right. I think our best
12 -- my best answer to that is I'll probably defer
13 to our counsel regarding those types of issues,
14 and maybe he can reach out to you and try to work
15 out what type of decision we can come up with.

16 MR. CARDAROPOLI: Does it help that we
17 also own the land behind there, between the
18 residential? Does that make a difference?

19 MR. DONNELLY: It might. It might
20 provide the opportunity for buffering if
21 buffering is required. We're trying to come up
22 with a list of things that need to be addressed.

23 MR. HINES: You own the Hudson Landing
24 Corporation?

25 MR. CARDAROPOLI: It's not Hudson.

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MR. HINES: It's not that anymore?

MR. CARDAROPOLI: No.

MR. HINES: Those lots, then?

MR. CARDAROPOLI: The lots are owned by people that -- one person that's in with the Mid-Hudson Marina. We own lots there but not the ones right behind.

CHAIRMAN EWASUTYN: Bryant, are you complete?

MR. COCKS: One other variance that will be necessary is I did note there's twenty-four townhome units instead of the maximum of twenty. So you will have to go before them for that also.

MR. CARDAROPOLI: We went to twenty-four because we made them smaller, but we didn't take any more area. I know that originally we said twenty. We asked for twenty to the Town but they were bigger.

MR. COCKS: That is the maximum that's stated in the marina section of the Zoning Law, so it would have to be addressed. The bulk table is showing that the twenty-four units have 1,500 square feet for each unit. You can put a minimum

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in the bulk so it shows because it was unclear whether that was a minimum or maximum, what they'll be.

Just also the parking calculations just have to be cleaned up a little bit just to show what's going to be used for the townhomes and what's going to be used for the marina.

The nature trail that you guys have on the bottom by the access road, or by the emergency access road, did you have any plan for that? I mean --

MR. CARDAROPOLI: Well, they were -- building a nature trail that you could walk the State and all the agencies put together, where you could walk along the Hudson, but I think it all fell through because most of it is not accessible. You go down the road a little bit and the mountains come right down. I don't know how they could ever make a path there. I think that that was all a great idea, but I haven't heard anything more about that in a couple of years.

MR. COCKS: Okay.

MR. CARDAROPOLI: We said we would gladly cooperate and connect our property.

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MR. COCKS: Okay. As Ken mentioned, I just have a couple questions about the boat trailer area that you guys addressed.

The gatehouse, and the clubhouse, and the pool, are those just for the townhomes or are they going to be accessed by people in the marina?

MR. VIEBROCK: That's correct. This will be a gated community, so the gatehouse and the pool is only for the marina project itself. That's it.

MR. COCKS: Okay.

MR. CARDAROPOLI: Wait. The gatehouse and the pool --

MR. VIEBROCK: Is for the residents of the project.

MR. CARDAROPOLI: Not for the marina.

MR. VIEBROCK: Not for the marina but for the townhomes. Correct.

MR. COCKS: Just the flood plain areas are just going to have to be looked at.

Also, the access agreement for the railroad company is going to have to be looked at.

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Other than that, that was my introductory comments with the concept plan.

MR. VIEBROCK: Okay.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: Our first comment had to do with similar variances that have been discussed.

The applicants are going to have to work with the DEC and the Health Department for placing the subsurface sanitary sewer disposal system under the parking. There are some alternate design systems using galleys that do allow that. I'm sure you're aware of that. We'll be looking for that information.

The proposed water supply, we note that there's only one well proposed and we believe that two will be required as a community water system of this size. So you'll need to be working towards that.

Permits from the Army Corp of Engineers as well as the DEC for a phase I, and the fire pump as well I think phase II. You may have those permits for the marina if they're still active.

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Our next comment we already discussed was whether the parking associated with the marina use is going to be built in phase I or if that should be shaded as a future phase II. 133 parking spaces for 24 houses is way too much at that point. So take a look at that.

The status of the emergency access drive, I don't know if it's been constructed from the cul-de-sac at the end of Anchor Drive into the site. That will need to be extended through I believe.

MR. CARDAROPOLI: Which one is that?

MR. VIEBROCK: I believe --

MR. CARDAROPOLI: I've got it blocked off now. It's unpaved. It's a dirt path.

MR. CANFIELD: There's a dirt road there.

MR. HINES: That may need to be upgraded. Emergency services will weigh in on that.

I have some comments on the bulk table that you can clean up.

Crossing of the railroad tracks is going to need coordination with the railroads,

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which will need some permits.

I had a question, and we discussed it at work session. I don't know the answer. I have a question whether there's a 280-A problem with a residential use here, unless that Oak Street extension is a Town road right now.

MR. CARDAROPOLI: Yes, it is.

MR. HINES: That solves that. So right up to your site it's a Town road?

MR. CARDAROPOLI: No. I think it's a Town road. Down there some of the Town roads aren't paved, so it's hard to tell.

MR. HINES: We're going to have to look at that to make sure you have access.

MR. CARDAROPOLI: We have access. I saw it in the title report.

MR. HINES: If you could provide that information also to Mike Donnelly's office for a review.

MR. VIEBROCK: It should have been on the survey. I'll check it anyway to make sure.

MR. HINES: Clean up on some parking spaces.

I had a question also about the

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facilities, the clubhouse and the pool, utilizing them at the same time. You clarified that.

I did also have a question regarding the pier. It looks like that center pier between the two docking facilities, is there an attempt to make that kind of a public use, or for a large boat, or --

MR. CARDAROPOLI: I would say a large boat.

MR. HINES: But privately owned? It's not like a River Rose tour?

MR. CARDAROPOLI: Nothing like that.

MR. HINES: I'm looking at the parking issue. As long as it's privately accessed, that's fine.

That's all I have.

MR. CARDAROPOLI: There shouldn't be any concern of water because everybody knows that that big underground river runs right underneath their property. That's why the County wanted the property.

MR. HINES: Groundwater resources?

MR. CARDAROPOLI: There's so much water there.

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MR. VIEBROCK: This is all sand and gravel. And the drawdown, 40 gallons per minute, didn't do much of a dent.

MR. HINES: I think you're going to need two wells.

MR. VIEBROCK: I talked to -- we met with Ed Simms with the Health Department, we discussed the project, and the intent we're going to be moving forward is to utilize -- this is our primary and then have them basically drop another straw right next to it as a backup, just a mechanical backup. Typically Orange County likes to have separate with its own. This is going to get a separate, essentially, deviation from them. I'm working on getting a letter from them to grant me the well location.

MR. HINES: I didn't know if you had a well head protection issue either with that.

MR. VIEBROCK: We talked about that, too. All the conversations with Ed were very positive, so I'm looking forward to getting a letter so you guys can have a copy of the letter to know that they're granting -- you know, they're happy -- they're okay with --

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MR. HINES: With the concept.

MR. VIEBROCK: Yeah.

MR. HINES: That's our initial
comments.

CHAIRMAN EWASUTYN: Jerry Canfield,
Code Compliance?

MR. CANFIELD: I have a couple
questions. The buildings themselves, is it your
intent to sprinkler them?

MR. CARDAROPOLI: Well --

MR. CANFIELD: The residential
buildings.

MR. CARDAROPOLI: As you know, New York
State eventually will put them into the
buildings. The new codes came out, or they're
coming out November 1st, but you've got until the
end of the year to use the old codes. The State
couldn't get everything right on the sprinkler
systems, so they're not in there.

MR. CANFIELD: That's correct.

MR. CARDAROPOLI: I mean I just hear
everybody complaining. I think I got it pretty
much correct. So is there going to a sprinkler
system in there? No.

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MR. CANFIELD: At this time it's not your intent?

MR. CARDAROPOLI: No. Two years from now when we probably build it, unless you want to give me final approval tonight, there will be sprinkler systems in residential I believe. I mean they want it. The State wants it. They just don't move too fast.

MR. CANFIELD: You've adequately answered my question. You're aware of it, you know it's coming, you'll prepare for it.

MR. CARDAROPOLI: We have to do it.

MR. CANFIELD: Okay. The other question I had is on the residential buildings, their overall height, will they exceed thirty feet?

MR. CARDAROPOLI: I don't believe so.

MR. CANFIELD: Okay. I mention that because the concern is the fire lane access. If they exceed thirty feet, it should be twenty-six feet in the vicinity of the building, and you're only showing twenty-four now.

MR. CARDAROPOLI: Okay.

MR. CANFIELD: That's it conceptually. As details become available for the fire pump --

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2 and one other question, I think Pat brought it
3 up. On the fire pump, back-up power will be
4 required. It's an added expense. Not that it's
5 an issue but you should be aware of it. As those
6 details become available we'll further review.
7 That's all I have.

8 CHAIRMAN EWASUTYN: Frank Galli,
9 Planning Board Member?

10 MR. GALLI: Do you have a permit from
11 CSX yet?

12 MR. CARDAROPOLI: That thing was given
13 to us -- not to me. I wasn't even born when that
14 was done. That right-of-way has been used for
15 probably seventy or eighty years, and it's in
16 titles. We've got title insurance guaranteeing
17 the right-of-way but we don't have anything in
18 our hand. When you call the railroad, they don't
19 even return your phone call. When they did they
20 said we don't have records that go back that far.

21 MR. GALLI: It took a long time to get
22 permits. I just wanted you to have a back-up
23 plan.

24 MR. CARDAROPOLI: We have the title.

25 MR. VIEBROCK: There's a long history

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with the property. My surveyors went back a long way.

MR. GALLI: We dealt with CSX before. That's why I asked the question.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: The properties to the west of this site, will those houses have any access to use like the clubhouse or anything?

MR. CARDAROPOLI: There's no properties to the west. There's oil tanks. To the north? To the west? You're right. To the west. That's where my son lives, to the west. Will they have any access? Not unless they want to come down and buy a condominium. I'm sorry. Come down and buy a villa.

MR. MENNERICH: Thank you.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: I have no questions at this time.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I look at this project and it's something that is definitely needed, because if you take a look at the condos, or whatever you want to call them, along the Hudson,

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nothing really turns me on. I think this will be very successful.

The initial comment I had was being so close to the river, I'm going to be looking at how the sewage is going to be handled, the runoff, how that's going to be handled.

The question about the well you answered. So those are things I'm going to be looking at.

MR. CARDAROPOLI: I don't blame you.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: My questions were covered.
Thank you.

MR. DONNELLY: John, I had two comments if I could. Who was the lead agency on this review?

CHAIRMAN EWASUTYN: We were.

MR. DONNELLY: The Planning Board was. We'll really need to take stock of our earlier SEQRA proceedings. You said there was a table, and we'd like to see it, that shows the scope of the EIS, the findings and what -- this current plan, whether it falls within the scope of the study and is covered by the findings or whether

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there's anything new that needs to be addressed.

The second issue, just to clarify, the potential 280-A, I don't know if I'm reading the plan correctly but it seems that you may be acquiring part of your access by easement or right-of-way across lands of others that is not on a mapped street. I don't know if that's true. It looks like you go through the Hess property.

MR. CARDAROPOLI: We come down. We have a right-of-way through the Hess property. You're right. Now it's coming back to me.

MR. DONNELLY: That may present an issue under 280-A, and I don't know how it was handled in the past.

MR. CARDAROPOLI: It was given as access to the restaurant and the prior thing by the Planning Board.

MR. VIEBROCK: This is something we can put on our list for our counsel.

MR. DONNELLY: Generally speaking, you can't have access by right-of-way without creation of an open development area. Maybe that was done. I don't know. We'll have to look at the issue.

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2 CHAIRMAN EWASUTYN: So the action
3 before us this evening, Mike, is to grant a
4 conceptual approval to the Mid-Hudson Marina
5 residential site plan? I'll move for that
6 motion.

7 MR. PROFACI: So moved.

8 MR. FOGARTY: Second.

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

12 MR. MENNERICH: I would like to
13 question the fact that some of the points that
14 were brought up could drastically change the
15 layout, and the concept could change
16 considerably. I guess -- am I missing something
17 there?

18 CHAIRMAN EWASUTYN: Okay. I'll bring it
19 up for comments. Frank Galli?

20 MR. GALLI: Well, the parking would
21 definitely change because they're going to take
22 that off. It's not going to go in in phase I,
23 that's going to go in in phase II. So that's
24 going to be open space now.

25 The layout of the actual buildings, I

1 think -- you know, I haven't seen the zoning
2 reports, I don't know what's actually front yard
3 or rear yard. That could drastically change. I
4 mean it may not change. They may have to go for
5 variances, which I don't know if they're prepared
6 to do, or try to change something in the project.

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8 So I think I would agree with Ken
9 that there could be a lot of different variables
10 at this point for conceptual.

11 As far as the actual, you know, housing
12 and stuff like that, I'm not -- that's fine and
13 everything. I just don't know what it's going to
14 end up being, what's the access road, the road
15 around the whole property.

16 Definitely all the parking lots go in
17 for the first phase. If they're going to move
18 anything else according to the buildings on the
19 actual site.

20 I know we know the actual unit count,
21 we know the actual clubhouse, gate, pool, that
22 type of thing. I don't know if we know where it's
23 going to actually be on the plan yet.

24 CHAIRMAN EWASUTYN: Tom Fogarty?

25 MR. FOGARTY: This is their initial

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presentation on this. I think as we go on, as they develop the project, a lot of those questions will be answered.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: Like everybody is saying, there's a lot of unknown variables going with variances and questions like that, so --

MR. PROFACI: You skipped me.

CHAIRMAN EWASUTYN: I apologize. You made the motion. Why I did that was because you made the motion. I didn't forget you.

MR. PROFACI: I just wanted to say that there may be changes in details but I think as far as concept is concerned, this is your concept. You're not looking to change anything --

MR. CARDAROPOLI: No.

MR. PROFACI: -- drastically. You might have to tweak it a little bit.

MR. CARDAROPOLI: Just whatever you force me to.

MR. PROFACI: That reinforces my motion then.

CHAIRMAN EWASUTYN: I don't think we

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2 have^ we've a majority at this point to approve
3 the conceptual residential site plan, so we're
4 going to have to rescind that motion and ask you
5 to resubmit with a conceptual site plan that
6 addresses the outstanding issues that we
7 discussed this evening.

8 MR. CARDAROPOLI: Okay. No problem.

9 CHAIRMAN EWASUTYN: Is it possible, the
10 copy that Bryant referenced that you made your
11 presentation to the Town Board, can you make
12 additional copies for the Planning Board Members?

13 MR. VIEBROCK: Absolutely. Give me a
14 call and let me know how many you need. About
15 ten copies?

16 CHAIRMAN EWASUTYN: Fourteen copies.
17 Just let me know when you're going to submit
18 because I have to schedule that with the office,
19 with the building department.

20 MR. VIEBROCK: Okay.

21 MR. CARDAROPOLI: When we went through
22 to get that change, that zoning change for the
23 Town, it took -- I can't understand how anything
24 could have been left out with the right-of-way
25 and everything, because I believe it took over --

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MID-HUDSON MARINA

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close to say two years.

MR. DONNELLY: Maybe it was covered. I don't have any information.

MR. CARDAROPOLI: It took a long time, eighteen months to two years, and there was a lot of legal billing. I'm sure it was covered. It better be.

CHAIRMAN EWASUTYN: Thank you.

MR. CARDAROPOLI: Thank you.

(Time noted: 8:42 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: November 1, 2010

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

----- X

In the Matter of

THE POLO CLUB
(2006-09)

Request for an Extension of Preliminary
Site Plan Approval

----- X

BOARD BUSINESS

Date: October 7, 2010
Time: 8:44 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

----- X

MICHELLE L. CONERO
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Wallkill, New York 12589
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THE POLO CLUB

107

MR. PROFACI: We have a few items of Board Business. The first one is a discussion on The Polo Club, a request for an extension of preliminary site plan approval which will run from September 29, 2010 to March 29, 2011.

CHAIRMAN EWASUTYN: I'll move for a motion to grant the request for the preliminary extension of The Polo Club.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

(Time noted: 8:44 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: November 1, 2010

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

----- X
In the Matter of

DRISCOLL SUBDIVISION
(2005-46)

Request for an Extension of Preliminary
Subdivision Approval

----- X

BOARD BUSINESS

Date: October 7, 2010
Time: 8:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

----- X

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

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MR. PROFACI: The next item is the Driscoll Subdivision, a request for an extension of preliminary subdivision approval which will run from September 29, 2010 to March 29, 2011.

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

MR. MENNERICH: So moved.

MR. FOGARTY: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself yes. So carried.

(Time noted: 8:45 p.m.)

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

----- X

In the Matter of

NAPOLITANO
(2009-10)

- Request to go from Final Subdivision Approval to Preliminary Subdivision Approval
- Request for an Extension of Preliminary Subdivision Approval

----- X

BOARD BUSINESS

Date: October 7, 2010
 Time: 8:46 p.m.
 Place: Town of Newburgh
 Town Hall
 1496 Route 300
 Newburgh, NY 12550

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

----- X

MICHELLE L. CONERO
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NAPOLITANO

113

MR. PROFACI: The next item is Napolitano, a request to go from final subdivision approval to preliminary subdivision approval, and a request for an extension of preliminary subdivision approval which will run from October 1, 2010 to April 1, 2011.

CHAIRMAN EWASUTYN: At this point I'll turn the meeting over to Mike Donnelly.

MR. DONNELLY: As we discussed earlier, that would normally have been our practice, to accept surrender of a conditional final approval when the 380-day maximum limit was near completion and return the applicant to preliminary application approval status, and then extend the preliminary approval. As I pointed out to you in my opinion letter of last week, the State Legislature recently amended Section 277 of the Town Law and now allows you, it doesn't require you, to grant extensions of conditional final approval beyond its initial duration of 180 days, in increments of 90 days, without limitation provided that, in your opinion, the circumstances warrant. So if you were inclined to do so, you could, instead of returning the

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NAPOLITANO

114

applicant to preliminary status and extending that, you could grant an extension of the conditional final approval for a 90-day period, which my calendar tells me would expire on January 6, 2011.

CHAIRMAN EWASUTYN: Having heard the presentation from Mike Donnelly, I'll move to grant an extension of the conditional final subdivision approval for the lands of Napolitano to January 6, 2011.

MR. WARD: So moved.

CHAIRMAN EWASUTYN: I have a motion by John Ward.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: A second by Joe Profaci. I'll ask for a roll call vote starting with Tom Fogarty.

MR. FOGARTY: Aye.

MR. WARD: Aye.

MR. PROFACI: Aye.

MR. MENNERICH: Aye.

MR. GALLI: Aye.

CHAIRMAN EWASUTYN: And myself.

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

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

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DATED: November 1, 2010

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LOCAL LAW AMENDMENT

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

----- X

In the Matter of

LOCAL LAW AMENDING THE ZONING LAW
RE: RESIDENTIAL LOT AREA

Discussion by Michael Donnelly and Bryant Cocks

----- X

BOARD BUSINESS

Date: October 7, 2010
Time: 8:48 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

----- X

MICHELLE L. CONERO
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1
2 MR. PROFACI: The final item of Board
3 Business this evening is Michael Donnelly and
4 Bryant Cocks will hold a discussion on the
5 proposed Local Law amending the Zoning Law in
6 regards to residential lot areas.

7 CHAIRMAN EWASUTYN: Mike Donnelly, I'll
8 let you begin the presentation.

9 MR. DONNELLY: You've received from
10 Mark Taylor a proposed introductory Local Law 9
11 of 2010, which Bryant has outlined in a memo and
12 will outline for you again in a moment, some
13 proposed changes to the manner of calculation of
14 density, usable area and other provisions under
15 the code. Your ordinance requires, in Section
16 185-60, before the Town Board can act, that you
17 render a report within thirty days of request
18 back to the Town Board. Where the Local Law
19 proposes a change in the text of the chapter, you
20 are required to report on four particular
21 factors. The first is whether such change is
22 consistent with the aims and principles embodied
23 in the chapter as to the particular districts
24 concerned. As an example, what is proposed here
25 is to, among other things, bring the senior

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2 citizen and affordable housing provisions to a
3 usable area, and I'm using that term generically,
4 approach rather than from -- rather than to a
5 gross area approach. You may well find that
6 that's consistent with how housing is handled in
7 the existing provisions of the law other than
8 those two.

9 The second is which areas and
10 establishments in the Town will be directly
11 affected by such change and in what way they will
12 be affected.

13 Third, the indirect implications of
14 such change and its affects on other regulations.

15 And finally, whether such amendment is
16 consistent with the aims of the master plan. I
17 can certainly repeat those for you again later,
18 but I think that's the table of contents of what
19 your report should comment upon.

20 Bryant can outline for you the
21 particular proposals.

22 CHAIRMAN EWASUTYN: Thank you. Having
23 received the letter from Mark Taylor on the 1st
24 of October 2010, which is normal procedure in
25 preparation for discussion at this meeting, I ask

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2 Bryant Cocks, Planning Consultant, if he would
3 take the time to give us a bullet outline for a
4 simple understanding of the proposed Local Law
5 change.

6 Bryant, could you make your
7 presentation?

8 MR. COCKS: Absolutely. The first group
9 of changes that were included in the local law
10 was the inclusion of the definitions for building
11 envelop, buildable area, slope and steep slope.
12 We talked about those four definitions, and they
13 really aren't changed from anything that we
14 talked about, they're just now in the Zoning
15 Ordinance. Steep slope is anything 25 percent or
16 more. A slope is just the definition of a slope.
17 Building envelop is just the dashed area that
18 we're already showing around the house locations.
19 Buildable area is just defining what kind of
20 environmental constraints are against where the
21 house is going to be.

22 They did change the usable area
23 definition. They're changing it to now include
24 usable area for all new lots, not just major
25 subdivisions. They're also making it a little

1
2 bit more restrictive by including steep slopes
3 and DEC regulated water bodies, which previously
4 were just water bodies. So that would be the
5 change to that.

6 The new usable area definition is going
7 to be used to calculate density for multiple
8 dwellings, attached dwellings, cluster and
9 multiple-family attached dwellings, affordable
10 and senior citizen attached multiple housing
11 developments. The net acreage is now going to be
12 used to calculate the density in these types of
13 developments. They showed a chart showing which
14 type of developments will use this requirement
15 and the amount. For almost everything it's a
16 hundred percent for usable area. For affordable
17 housing and senior housing, only 75 percent of
18 the constrained lands are to be deducted. So say
19 if you have 100 gross acres and 50 are usable,
20 you have an affordable housing and senior
21 development, the density would be based on 62.5
22 acres instead of 50 because they're giving you
23 that extra 25 percent for density, and that would
24 provide the bonus and give the applicants
25 incentive to go forward with the project.

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2 They're also adding a new column on the
3 bulk tables for minimum building areas. It's
4 going to be an area within the building envelop
5 to allow the siting of principal building and
6 accessory uses, not constrained by DEC regulated
7 water bodies, and protect the wetlands, steep
8 slopes, 100-year flood plains and existing public
9 or private roads or utility easements. That
10 basically means that now when you look at the
11 bulk tables, there's going to be another column
12 and they're going to give a minimum amount of
13 area in which the house has to be situated on.
14 So it's pretty much in every case going to be the
15 same as the building envelop we utilize now,
16 which is the dashed line surrounding the houses,
17 and it's going to have to be large enough to fit
18 the building area shown in the new bulk table
19 column. So now that dashed area is going to be a
20 minimum that we're going to have to make sure is
21 required.

22 So that's basically the changes that
23 are going to happen. And it pretty much affects
24 multiple housing more than single-family housing.

25 CHAIRMAN EWASUTYN: Any additional

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comments from our consultants? Karen Arent,
Landscape Architect? Pat Hines, Drainage
Consultant?

MR. HINES: I have nothing.

CHAIRMAN EWASUTYN: Jerry Canfield?

MR. CANFIELD: I have nothing.

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

MR. GALLI: No additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No questions.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No questions.

CHAIRMAN EWASUTYN: Mike Donnelly?
Excuse me. Tom Fogarty?

MR. FOGARTY: Am I right that -- I just
read this quickly -- basically what we're
proposing here is that the Town is saying that
most of the land, as we develop land, that it's
going to run out so therefore let's take a look
at the land that we can not develop right now and
let's see how we can develop that land?

MR. HINES: No. It's more so as if
you're going to take a piece of property, you

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2 take out the environmental constraints. If you
3 have a 10-acre parcel that say 5 acres of it has
4 some environmental constraints, Federal wetlands
5 or steep slopes, you're not going to be able to
6 use the entire parcel in your bulk area to say
7 how many units per acre you can get. Your
8 acreage is going to be reduced by areas that are
9 environmentally constrained by wetlands, water
10 bodies, steep slopes. There were a couple
11 others. It's going to take land that couldn't be
12 developed and take it out of your bulk area
13 calculations. Developed because of some
14 environmental constraint.

15 MR. COCKS: It's actually helpful to
16 the environment. It's laying out what areas of
17 the site you can't use at all as usable area.

18 MR. HINES: Right now you could have a
19 10-acres parcel, 5 acres of which is a lake, and
20 do your calculations for amount of units based on
21 a portion of the property that's actually under
22 the water. They're going to take that out now
23 for those uses that Bryant had specified.

24 MR. MENNERICH: In the past we've had
25 that situation. Orange Lake, I remember half the

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land was in the lake.

CHAIRMAN EWASUTYN: Tom, any additional questions?

MR. FOGARTY: No. That's all right. I'm still a little confused but I don't even know the right question to ask.

CHAIRMAN EWASUTYN: Take your time. John Ward?

MR. WARD: No questions.

CHAIRMAN EWASUTYN: I have a question. In the case of a project that received conditional final site plan approval and then rescinded that approval to preliminary approval, that may have had approval that didn't take out the steep slopes. If this Local Law was adopted, what is the impact on that project? What could be the impact?

MR. DONNELLY: My quick review of this doesn't provide grandfathering to either preliminary approvals or final approvals, and therefore up until plan signing, and perhaps even building permit, depending upon how the Town Board finally enacts this, it may have immediate impact. It may be one of the factors they wish

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2 you to report upon is the number -- the indirect
3 implications of such change, and you may want to
4 suggest that it may have impacts on already
5 approved projects and they may want to consider
6 some type of grandfathering.

7 MR. CANFIELD: Mike, did you say
8 inclusive of ones with permits issued?

9 MR. DONNELLY: No. No. I think the
10 argument -- I assume that unless it's got a
11 permit, that the law would affect it. They could
12 grandfather it at conditional final approval,
13 preliminary approval, those where applications
14 were filed before a particular date, how ever
15 they want to do it. As written, I don't see that
16 kind of grandfathering. I may have missed it.

17 CHAIRMAN EWASUTYN: Would the Board
18 like to add a sentence or a paragraph to a
19 response outlining what Mike Donnelly discussed
20 as far as consideration?

21 MR. GALLI: Yes.

22 MR. MENNERICH: Yes.

23 MR. PROFACI: Absolutely.

24 MR. COCKS: I think this is -- the memo
25 to the Town Board is going to be different than

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2 that. This was just laying out for you guys what
3 the changes are going to be. The Town Board has
4 to include the four things Mike discussed before.
5 It's going to be a different format. This was
6 just for your information.

7 CHAIRMAN EWASUTYN: I understand now.
8 If we have thirty days to have a written response
9 to the Town Board, and I ask the Board Members if
10 they're agreement, is the bullet that was just
11 presented, Mike would make that part of the text?

12 Mike, where are we at this moment in
13 time?

14 MR. DONNELLY: Under the four factors
15 that you need to report upon, the first, and I'm
16 not trying to put words in your mouth but I'll
17 make some suggestions -- findings and you tell me
18 what you want to put. Whether such change is
19 consistent with the aims and principals embodied
20 in the chapter as to the particular districts
21 concerned. I think in terms of the methodology,
22 affordable housing had been given a different
23 treatment from other types of housing in order to
24 incentivize it, being something a developer would
25 want to pursue. While this does affect that

1 significantly, it keeps the same aim and
2 principal, it just incentivizes it to a lesser
3 extent. If you feel that's correct, or if you
4 want to change that, I can change it any way you
5 want. It seems to me while there's certainly an
6 impact, the methodology and the approach remains
7 the same, affordable housing is incentivized.
8

9 In terms of the rest of it, it's just
10 clarifications of what buildable area is, usable
11 area is, and trying to make a more consistent
12 approach to how development of residential
13 properties will be governed by the ordinance.

14 Under the second factor, which is which
15 areas and establishments in the Town will be
16 directly affected by such change and in what way
17 they'll be affected. Obviously it affects all
18 residential development in all zones within the
19 Town. In what way they'll be affected, they'll
20 be affected by needing to comply with the new
21 requirements of the code. I don't know if that's
22 stating the obvious but I don't know what else
23 you would want to add to that.

24 Three, the indirect implications of
25 such change and its affect on other regulations.

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2 This is where I suggested, and you've decided,
3 that you wish to make a note that they may want
4 to consider grandfathering because, as written,
5 it would arguably apply to all properties that
6 have not yet received permits for development.

7 Lastly, whether such amendment is
8 consistent with the aims of the master plan. The
9 findings paragraph of the Local Law itself
10 reflects that this was indeed a finding that was
11 in the comprehensive development plan, that was
12 identified for incorporation into the zoning
13 chapter and is only now being put forth by the
14 Town Board.

15 CHAIRMAN EWASUTYN: Tom, I know you
16 said you thought you had more questions, you're
17 not prepared. Would you like for Mike Donnelly
18 to prepare an outline as he just presented to us,
19 e-mail it of course to all of us, have a chance
20 to look it over and then at our next meeting
21 memorialize what Mike is talking about, add or
22 delete any part of it?

23 MR. FOGARTY: That would be helpful.

24 MR. DONNELLY: I will do that.

25 MR. MENNERICH: Could that outline just

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be in the form of a draft letter?

MR. DONNELLY: That's how I would propose to do it. I'll work with Bryant to incorporate his other comments.

CHAIRMAN EWASUTYN: Thank you.

Joe, you've got the most important part.

MR. PROFACI: Having no further business, I'll make a motion that we close the Planning Board meetng of the Town of Newburgh Planning Board for October 7, 2010.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

(Time noted: 9:00 p.m.)

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DATED: November 1, 2010