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

----- X

In the Matter of

O'BRIEN LANE III  
(2011-16)

O'Brien Lane  
Section 6; Block 1; Lot 9.24  
AR Zone

----- X

PUBLIC HEARING  
TWO-LOT SUBDIVISION

Date: November 3, 2011  
Time: 7:00 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: JAMES RAAB

----- X

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

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O'BRIEN LANE III

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MR. PROFACI: Good evening. Welcome to the Town of Newburgh Planning Board meeting of November 3, 2011. I'd like to call the meeting to order with a roll call starting with Frank Galli

MR. GALLI: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. FOGARTY: Here.

MR. WARD: Present.

MR. PROFACI: The Town of Newburgh Planning Board receives input from several professional consultants, including SEQRA determinations. I ask them to introduce themselves now.

MR. DONNELLY: Michael Donnelly, Planning Board Attorney.

MS. CONERO: Michelle Conero, Stenographer.

MR. CANFIELD: Jerry Canfield, Town of Newburgh, Code Compliance Supervisor.

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

1  
2 MR. COCKS: Bryant Cocks, Planning  
3 Consultant.

4 MR. PROFACI: Now I'd like to ask John  
5 Ward to lead us in the Pledge of Allegiance.

6 (Pledge of Allegiance.)

7 MR. WARD: If you have a cell phone,  
8 please put it on vibrate or turn it off. Thank  
9 you.

10 MR. PROFACI: The first item on  
11 tonight's agenda is a public hearing on a two-lot  
12 subdivision for O'Brien Lane III off of Pressler  
13 Road, Section 6; Block 1; Lot 9.24, in the AR  
14 Zone, represented by -- not Charles Brown.

15 MR. RAAB: Jim Raab.

16 MR. PROFACI: Prior to commencing our  
17 public hearing, I ask Ken Mennerich to read the  
18 notice of hearing.

19 MR. MENNERICH: "Notice of hearing,  
20 Town of Newburgh Planning Board. Please take  
21 notice that the Planning Board of the Town of  
22 Newburgh, Orange County, New York will hold a  
23 public hearing pursuant to Section 276 of the  
24 Town Law on the application of O'Brien Lane III  
25 for a two-lot subdivision on premises O'Brien

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O'BRIEN LANE III

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Lane off Pressler Road, designated on Town tax map as Section 6; Block 1; Lot 9.24. Said hearing will be held on the 3rd day of November 2011 at the Town Hall Meeting Room, 1496 Route 300, Newburgh, New York at 7 p.m. at which time all interested persons will be given an opportunity to be heard. By order of the Town of Newburgh Planning Board. John P. Ewasutyn, Chairman, Planning Board Town of Newburgh. Dated October 14, 2011."

MR. GALLI: The notice of hearing was published in The Mid-Hudson Times and in The Sentinel newspapers. Six notices were sent out, four were returned. The notice of hearing and the affidavit of publication are all in order.

MR. PROFACI: Thank you. I would like to ask Planning Board Attorney, Mike Donnelly, to explain the purpose of the public hearing.

MR. DONNELLY: There are two public hearings on this evening's agenda, both of them are subdivision public hearings and are mandated by State law. Though both of these applications have been before the Board for some period of time now, the purpose of the hearing is to hear

1 from you, the members of the public, what  
2 concerns you may have about the project, given,  
3 in most cases, that you live near it. After the  
4 applicant gives its presentation, the Chairman  
5 will call on those members that wish to speak. We  
6 ask you to please step forward, give your name  
7 and address to our Stenographer, and direct your  
8 comments to the Board. If you have questions,  
9 they can be directed to either the applicant or  
10 to one of the Town's consultants.  
11

12 CHAIRMAN EWASUTYN: Jim.

13 MR. RAAB: For the record, my name is  
14 Jim Raab, I'm representing Taconic Design  
15 Engineering and WNG Properties who are  
16 subdividing the original lot 4 of the original  
17 O'Brien subdivision which was filed back in '07  
18 into a two-lot subdivision. There are two lots,  
19 52,280 square feet and 53,344 square feet.

20 Both lots will be served by individual  
21 wells and septic systems. They'll be served by a  
22 partial common driveway off of the private road,  
23 O'Brien Lane, which is existing at this time.

24 That's pretty much it.

25 CHAIRMAN EWASUTYN: Comments from Board

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Members. Frank Galli?

MR. GALLI: No comments.

CHAIRMAN EWASUTYN: Ken?

MR. MENNERICH: No comments.

MR. PROFACI: No comments.

MR. FOGARTY: I have no comment.

MR. WARD: No comment.

CHAIRMAN EWASUTYN: At this point I  
turn to our Consultants for their final comments.  
Jerry Canfield?

MR. CANFIELD: I have nothing at this  
time.

CHAIRMAN EWASUTYN: Pat Hines, Drainage  
Consultant?

MR. HINES: The plans have been revised  
based on our last comments. The wells and septic  
systems have been relocated on the plan to meet  
the separation distances. That was a comment of  
both ours and the County Planning Board review.

The retaining walls were previously  
shown on the site. They have been removed from  
the site and grading plans have been provided and  
the houses relocated to remove the need for  
retaining walls. So the sites are shown that

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O'BRIEN LANE III

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they can be constructed without them.

The project is, as was mentioned, part of a larger development scheme that was originally approved in 2007, so we required that they gain coverage under the original project's stormwater SPDES permit. They have provided that information to the Town and it's in our files, so they've addressed our previous comments.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: Jim, does that plan have the 10,000 square foot buildable area requirement?

MR. RAAB: Yes. We checked it today. Because the lot lines had changed, I understand why you thought that maybe we should check it. We did. We did immediately. We have 10,500 square feet.

MR. COCKS: That was my only comment. Orange County Planning Department did issue a Local determination.

MR. RAAB: We're going to have to revise the coverage on lot line sheet 1. We didn't do that.

1  
2 CHAIRMAN EWASUTYN: Okay. As Mike  
3 Donnelly had said earlier in the meeting, if  
4 there's anyone here that has any questions or  
5 comments, raise your hand and give your name and  
6 address, please.

7 (No response.)

8 CHAIRMAN EWASUTYN: Let the record --

9 MR. MENNERICH: Jim, where they have  
10 the crossed hatches, the proposed common driveway  
11 easement, how can it come at such an unusual  
12 shape --

13 MR. RAAB: What it is is that we were  
14 trying to cover -- the reason why it's -- it  
15 bends back in right here. The driveway bends  
16 back into that. That's why it's got that weird  
17 shape to it. We want to make sure that the  
18 common driveway easement covered both driveways  
19 where it needed to.

20 CHAIRMAN EWASUTYN: Any additional  
21 comments from Board Members?

22 (No response.)

23 CHAIRMAN EWASUTYN: If there's no one  
24 in the audience that has any questions or  
25 comments at this time, then I'll move for a



1 motion to close the public hearing on the two-lot  
2 subdivision for O'Brien Lane III.  
3

4 MR. FOGARTY: So moved.

5 MR. GALLI: Second.

6 CHAIRMAN EWASUTYN: I have a motion by  
7 Tom Fogarty. I have a second by Frank Galli.  
8 Any discussion of the motion?

9 (No response.)

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

12 MR. GALLI: Aye.

13 MR. MENNERICH: Aye.

14 MR. PROFACI: Aye.

15 MR. FOGARTY: Aye.

16 MR. WARD: Aye.

17 CHAIRMAN EWASUTYN: Myself yes. So  
18 carried.

19 At this point we'll turn to the  
20 Planning Board Attorney, Mike Donnelly, to give  
21 us conditions of approval and the final  
22 resolution.

23 MR. DONNELLY: As Pat Hines said, this  
24 is subject to an existing SPDES permit. We'll  
25 reflect that as the first resolution condition.

1 We will need a common driveway easement and  
2 maintenance agreement to be reviewed by me. And  
3 finally, there is one new lot created in this  
4 subdivision, and that will be subject to a  
5 parkland fee in the amount of \$2,000.

7 CHAIRMAN EWASUTYN: Any questions or  
8 comments in reference to the final resolution?

9 (No response.)

10 CHAIRMAN EWASUTYN: Okay. Then I'll  
11 move for a motion from the Board to grant the  
12 final conditional approval for O'Brien Lane III  
13 as presented by Attorney Mike Donnelly in the  
14 resolution.

15 MR. GALLI: So moved.

16 MR. MENNERICH: Second.

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

20 (No response.)

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

23 MR. GALLI: Aye.

24 MR. MENNERICH: Aye.

25 MR. PROFACI: Aye.

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O'BRIEN LANE III

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MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself yes. So  
carried.

MR. RAAB: Thank you very much.

(Time noted: 7:06 p.m.)

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

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

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DATED: November 29, 2011

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

----- X  
In the Matter of

LANDS OF ELAPUS, LTD.  
(2011-20)

Bright Star Drive  
Section 9; Block 3; Lot 48.1  
R-3 Zone

----- X

PUBLIC HEARING  
TWO-LOT SUBDIVISION

Date: November 3, 2011  
Time: 7:07 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  
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: DARREN DOCE

----- X

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

1  
2 MR. PROFACI: The next item on the  
3 agenda tonight is Lands of Elapus, Limited. It's  
4 also a public hearing for a two-lot subdivision  
5 located on Bright Star Drive off of Oak Street,  
6 Section 9; Block 3; Lot 48.1, located in the R-3  
7 Zone, represented by Darren Doce.

8 MR. MENNERICH: "Notice of hearing,  
9 Town of Newburgh Planning Board. Please take  
10 notice that the Planning Board of the Town of  
11 Newburgh, Orange County, New York will hold a  
12 public hearing pursuant to Section 276 of the  
13 Town Law on the application of Lands of Elapus,  
14 Ltd for a two-lot subdivision on premises Bright  
15 Star Drive off Oak Street, designated on tax map  
16 number Section 9; Block 3; Lot 48.1. Said  
17 hearing will be held on the 3rd day of November  
18 2011 at the Town Hall Meeting Room, 1496 Route  
19 300, Newburgh, New York at 7 p.m. at which time  
20 all interested persons will be given an  
21 opportunity to be heard. By order of the Town of  
22 Newburgh Planning Board. John P. Ewasutyn,  
23 Chairman, Planning Board Town of Newburgh. Dated  
24 October 14, 2011."

25 MR. GALLI: The notice of hearing was

1 published in The Mid-Hudson Times and in The  
2 Sentinel for the newspapers. The affidavit of  
3 publication is in order. Seven were mailed out,  
4 six were returned.

5  
6 CHAIRMAN EWASUTYN: Thank you.

7 Darren.

8 MR. DOCE: I'm Darren Doce representing  
9 Elapus.

10 We're proposing a two-lot subdivision  
11 of a 1.9 acre parcel located on Bright Star Drive  
12 which is an existing private road off of Oak  
13 Street.

14 Parcels in an R-3 zone require 40,000  
15 square foot minimum lot size. Lot 1 will be  
16 40,063 square feet; lot 2, 40,855 square feet.

17 Access to both parcels will be off of  
18 Bright Star Drive.

19 There's an existing single-family house  
20 on lot 1 which has an existing septic and a well.

21 We're proposing a single-family home  
22 also on lot 2.

23 A sanitary disposal system was designed  
24 for that as per Board of Health and DEC  
25 regulations.

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That basically covers it.

CHAIRMAN EWASUTYN: Comments from Board Members. Frank Galli?

MR. GALLI: Nothing.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I have no questions.

MR. PROFACI: No questions.

MR. FOGARTY: I have no comments.

MR. WARD: No.

CHAIRMAN EWASUTYN: Our Consultants for their comments. Jerry Canfield?

MR. CANFIELD: Just a question for Darren. There was some equipment on this, the one lot. Has that been removed?

MR. DOCE: There was a backhoe that we had up there to do the test pits. There is a dump truck that I believe is still there.

MR. CANFIELD: Is that going to come out of there?

MR. DOCE: Yeah, it will come out of there.

MR. CANFIELD: Is it functional?

MR. DOCE: I do not know.

MR. CANFIELD: Okay. That's all I

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have.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: We previously had one minor technical comment on the septic system. That's been addressed. We have no outstanding comments on this two-lot subdivision.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: The applicant did e-mail me a revised plan showing the 10,000 square feet buildable requirement.

The twenty-foot drainage easement language will need to be submitted to Mike Donnelly for his review.

A stamped and sealed survey sheet is needed before the plans can be signed.

CHAIRMAN EWASUTYN: At this point I'll turn to the public to see if there's anyone here that has any questions or comments, please raise your hand.

(No response.)

CHAIRMAN EWASUTYN: Let the record show we had no interest from the public.



1  
2 I would move for a motion to close the  
3 public hearing for the two-lot subdivision for  
4 the Lands of Elapus.

5 MR. PROFACI: So moved.

6 MR. FOGARTY: Second.

7 CHAIRMAN EWASUTYN: I have a motion by  
8 Joe Profaci. I have a second by Tom Fogarty.  
9 Any discussion?

10 (No response.)

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

13 MR. GALLI: Aye.

14 MR. MENNERICH: Aye.

15 MR. PROFACI: Aye.

16 MR. FOGARTY: Aye.

17 MR. WARD: Aye.

18 CHAIRMAN EWASUTYN: And myself yes. So  
19 carried.

20 Mike Donnelly, Planning Board Attorney,  
21 would you give us conditions of approval, please.

22 MR. DONNELLY: We will need proof of  
23 recording of the existing drainage easement  
24 that's shown on the plans. Similarly,  
25 demonstration that the existing private roadway

1  
2 easement and maintenance agreement provides the  
3 right of access and the obligation of maintenance  
4 for the new lot that's created. I assume that it  
5 does but I'll need to see that. Finally, there  
6 was one new lot created in the subdivision, and  
7 that will be subject to a \$2,000 parkland fee.

8 CHAIRMAN EWASUTYN: Any questions about  
9 the resolution presented by Attorney Mike  
10 Donnelly?

11 (No response.)

12 CHAIRMAN EWASUTYN: Okay. Then I'll  
13 move for a motion to grant conditional final  
14 approval for the Lands of Elapus subject to the  
15 presentation by Mike Donnelly.

16 MR. WARD: So moved.

17 MR. PROFACI: Second.

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

21 (No response.)

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

24 MR. GALLI: Aye.

25 MR. MENNERICH: Aye.

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MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So  
carried.

Thank you, Darren.

(Time noted: 7:15 p.m.)

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

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

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DATED: November 29, 2011

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

----- X

In the Matter of

GREINER SUBDIVISION  
(2002-33)

Lattintown Road  
Section 7; Block 1; Lot 22.25  
AR Zone

----- X

SIXTEEN-LOT SUBDIVISION

Date: November 3, 2011  
Time: 7:15 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  
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: GREGORY SHAW

----- 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 a sixteen-lot  
4 subdivision. It's the Greiner Subdivision,  
5 project 2002-33, located on Lattintown Road  
6 opposite Merritt Lane, Section 7; Block 1;  
7 Lot 22.25, located in the AR Zone, being  
8 represented by Greg Shaw.

9 MR. SHAW: The last time this  
10 application was before the Board was in December  
11 of last year. Since that point in time we've  
12 gone to the Town Board and we have formed a  
13 drainage district for the subdivision.

14 We also obtained from the Town Board a  
15 waiver for cul-de-sac length.

16 We resolved with the Town the  
17 utilization of the name Greiner Road for the  
18 extension of that roadway.

19 Finally, we have the common driveway  
20 maintenance agreements which have been reviewed  
21 and accepted by your attorney.

22 In addition to that, we have revised  
23 the drawings in accordance with your consultants'  
24 comments.

25 So I'm here before you tonight to

1  
2 discuss the next step procedurally with respect  
3 to the subdivision. Normally I think we're at a  
4 point where I'd ask for final subdivision  
5 approval, but it's my understanding that once  
6 that approval is given, if the Board were to give  
7 it, that sets a time clock. In reality what my  
8 client would like to do is not to have a time  
9 clock at this point in time but to go in and  
10 start building the infrastructure. He realizes  
11 he's going to have to pay the inspection fees for  
12 the Town to come in and inspect his work  
13 accordingly, and whatever other requirements that  
14 come into play. I'm just not sure what all of  
15 them are.

16 The purpose of coming before the Board  
17 tonight is to explore the possibility of  
18 commencing construction, okay, taking care of the  
19 necessary tasks before construction, and then,  
20 once he gets to a certain point in the  
21 installation of the public improvements, then at  
22 that point provide a bond for the balance and  
23 whatever fees would be appropriate at that time.

24 Thank you.

25 CHAIRMAN EWASUTYN: I would like to

1  
2 turn to the group discussion with Mike Donnelly,  
3 Jerry Canfield and Pat Hines.

4 MR. DONNELLY: You're correct, Greg,  
5 that there would be a clock that would start when  
6 you get conditional final approval, and that's a  
7 provision of the Town Law. That clock runs for  
8 180 days. It used to be that it could only be  
9 extended for two additional 90-day periods and  
10 then after that it could not further be extended.  
11 Earlier in the year that statute was amended and  
12 now allows the Planning Board to continue to  
13 grant sequential 90-day extensions. So the time  
14 clock is not the walking of the plank that it  
15 used to be. And once you have your conditional  
16 final approval, again under the Town Law, you can  
17 either build or bond. Those are the choices that  
18 the State law gives you. But there are also  
19 provisions of the Town of Newburgh Code that come  
20 into play. If you had a conditional final  
21 approval, you might still need to get a clearing  
22 and grading permit if you were not going to, you  
23 know, file the map and bond. And the stormwater  
24 work would also be subject to some type of  
25 financial security and inspection fees . What

1  
2 you would certainly not be subject to would be  
3 the roadway bonding that would normally be the  
4 case if you wanted to file the map. But I don't  
5 think you can move forward without that  
6 conditional final approval unless you had some  
7 agreement, a developer's agreement of sorts, with  
8 the Town Board.

9 My recommendation earlier at the work  
10 session would be, since most of these do not come  
11 to the Planning Board, they would be post-  
12 approval discussions, that you try to set up a  
13 meeting with Jerry and Jim Osborne, and if  
14 necessary Mark Taylor and Pat Hines, to talk  
15 about how much earth moving there is, what the  
16 nature of the stormwater facilities are, whether  
17 they need performance bonding at all or just  
18 restoration bonding would be sufficient to  
19 restore the site to a safe and stable condition  
20 in the event work stopped, then to get an idea of  
21 what the inspection fees would be. It's not  
22 generally a Planning Board issue, but, as John  
23 said, I'll let Jerry and Pat chime in.

24 CHAIRMAN EWASUTYN: Jerry?

25 MR. CANFIELD: Like Mike had said, with



1  
2 the provisions of the clearing and grading law,  
3 Greg, on the surface what we looked at is the  
4 amount of area to be disturbed will be over the  
5 threshold. The clearing and grading permit  
6 requirements are, A, the need for a permit, and  
7 then the degree of review for the permit is based  
8 upon the amount of disturbance that there will  
9 be. In this case what it appears is that you  
10 will be over the one-acre threshold, which will  
11 bring you back before this Board for a clearing  
12 and grading permit.

13 I think what Mike is referring to is  
14 for us to identify exactly how much clearing and  
15 grading there will be done to find out where you  
16 fit in that permitting process. I think at this  
17 point we're all in agreement, yes, a clearing and  
18 grading permit is one of the permits that will be  
19 required.

20 MR. SHAW: Okay. I think I understand  
21 it but -- okay. If not, I'll follow up with you.

22 CHAIRMAN EWASUTYN: Pat Hines?

23 MR. HINES: I concur with what everyone  
24 had said.

25 CHAIRMAN EWASUTYN: Comments or

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questions from Board Members. Frank Galli?

MR. GALLI: No.

MR. MENNERICH: To be clear, if you wanted to get the final approval you would not have to go through the clearing and grading permit with the public hearings and everything. Is that what I'm --

MR. DONNELLY: You may still be subject to some of its financial security requirements.

MR. SHAW: Can I just interject for a second? I think from what you just explained, all right, is for us to get a conditional final approval, with there not being a time clock, it wouldn't affect us negatively, therefore we could ask for it, okay, and be free of that burden.

Independent of that, we still have the issues with respect to securing with the Town the storm drainage and the soil erosion issue. I think what you said was that if we were to get conditional final approval, the clearing and grading now becomes a non-issue.

MR. DONNELLY: You don't need to have a separate clearing and grading permit if the grading work you're going to do is the same work

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that was approved on the subdivision plat.

MR. SHAW: It will be.

MR. DONNELLY: I believe that the provisions of the clearing and grading article would require, if there wasn't subdivision security, that there be some financial security posted for the work. In any event, there be a stormwater security required.

MR. SHAW: Stormwater and --

MR. DONNELLY: But they're less than I think performance securities because they're not intended to complete the work but only to stabilize the site.

MR. SHAW: Correct. The estimate for the public improvements is a substantial number, hundreds of thousands of dollars. That's what we're trying to avoid at this point in time.

MR. DONNELLY: And that's permissible under the State law. The Town's interest is to make sure that the site is inspected as work progresses and that there's some degree of financial security on hand so if work stopped, or was done improperly, or you didn't obey the command to remedy the situation, that the Town

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had funds in hand to restore the site to a safe condition.

MR. SHAW: Those issues I would be working out with Mr. Osborne?

MR. DONNELLY: I believe so.

MR. SHAW: And with yourself, Jerry, or just Mr. Osborne?

MR. CANFIELD: I will be involved also.

MR. SHAW: Okay.

MR. HINES: Mike, you suggested a developer's agreement earlier?

MR. DONNELLY: If you wanted to pursue now with only preliminary, then I think the only option would be to enter into some contractual agreement with the Town under which they would allow you to perform the work. I'll call it a developer's agreement. They may use that same -- I don't know how Mark Taylor would want to handle it, whether he would want to have that or just the permitting process is sufficient.

MR. SHAW: You mentioned the word preliminary.

MR. DONNELLY: Right now you have preliminary approval.

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MR. SHAW: Correct.

MR. DONNELLY: If you wanted to start work on this site now without final approval, you would need to have some kind of developer's agreement with the Town.

MR. SHAW: From what we've just explained, I think I'm going to backtrack and ask you for us to get conditional final subdivision approval. It's probably to our benefit now as it's been explained to me. It just takes some of the hurdles away from us.

MR. DONNELLY: I believe that's true. I don't know if you want to explore it with Jim Osborne first to be sure or not, but I think that's the direction you're going to want to go.

MR. SHAW: Okay. If the Board is inclined, I think we would take the conditional final approval.

CHAIRMAN EWASUTYN: Mike, would you present to us what the conditions would be in the conditional final resolution?

MR. DONNELLY: I didn't prepare such a resolution but I do have the preliminary resolution, and I'll simply mark off as we go

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down what has been satisfied.

The first condition was road names.  
That's been satisfied?

MR. SHAW: Yes.

MR. DONNELLY: In addition to the  
common driveway easement and maintenance  
agreement, there was a cross-grading easement. I  
forget whether you submitted that to me.

MR. SHAW: No. We had notations on the  
plan which you said were acceptable.

MR. HINES: A blanket note.

MR. DONNELLY: Okay. That's satisfied  
then.

Ten-lot ARB is required.

MR. SHAW: Correct.

MR. DONNELLY: We'll continue that  
condition. The common driveway easement and  
maintenance agreement was done. Let's see.  
Orange County Department of Health, realty  
subdivision and orchard soil remediation?

MR. SHAW: Yes.

MR. HINES: We have that completed.

MR. DONNELLY: I don't need that.  
Stormwater SPDES?

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MR. SHAW: We have that.

MR. HINES: Yes.

MR. DONNELLY: Drainage district, you said you have that?

MR. SHAW: Yes.

MR. DONNELLY: Central Hudson letter?

MR. SHAW: That is still a work in progress. It's in the hands of the attorneys.

MR. DONNELLY: All right. And then parkland fees for each lot, I forgot the number but new language as we'll put in there. Those would be the conditions.

CHAIRMAN EWASUTYN: And a condition we have a sign off from Jim Osborne and Jerry Canfield in reference to that.

MR. DONNELLY: We wouldn't need it. Normally we wouldn't see that issue at all. It would be subject to either the build or the bond on the terms that the Town agreed to.

CHAIRMAN EWASUTYN: Okay.

Jerry, do you want to add anything?

MR. CANFIELD: No. Nothing.

CHAIRMAN EWASUTYN: Pat Hines?

MR. HINES: I'm good. Just actually

1  
2 for the Board, the plans have been revised to put  
3 the mountable concrete curbs that were discussed  
4 on previous projects in this area. Those plans  
5 have been updated to show that as coordinated  
6 with the highway department. Otherwise the rest  
7 of the items have been completed that were just  
8 listed.

9 CHAIRMAN EWASUTYN: Bryant Cocks,  
10 Planning Consultant?

11 MR. COCKS: Just the removal of the  
12 referral language that's on the plans.

13 MR. SHAW: That will go.

14 MR. DONNELLY: We'll have a sign off  
15 letter from you then to verify that.

16 CHAIRMAN EWASUTYN: Frank Galli?

17 MR. GALLI: No.

18 CHAIRMAN EWASUTYN: Ken Mennerich?

19 MR. MENNERICH: No.

20 MR. PROFACI: Nothing.

21 MR. FOGARTY: I have no comments.

22 CHAIRMAN EWASUTYN: John Ward?

23 MR. WARD: No comments.

24 CHAIRMAN EWASUTYN: Then I'll move for  
25 a motion to grant conditional final approval for



1  
2 the sixteen-lot subdivision for Greiner subject  
3 to the conditions presented to us by Attorney  
4 Mike Donnelly in that resolution.

5 MR. FOGARTY: So moved.

6 MR. PROFACI: Second.

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

10 (No response.)

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

13 MR. GALLI: Aye.

14 MR. MENNERICH: Aye.

15 MR. PROFACI: Aye.

16 MR. FOGARTY: Aye.

17 MR. WARD: Aye.

18 CHAIRMAN EWASUTYN: Myself yes. So  
19 carried.

20 MR. SHAW: Thank you.

21 CHAIRMAN EWASUTYN: We got this, it's  
22 just some minor comments from Creighton, Manning  
23 as far as the guide rail. We got that late this  
24 evening.

25 MR. SHAW: Can I just ask one question

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procedurally? I think the Attorney mentioned that the approval is good for 180 days. After that are the extensions automatically granted or do I have to correspond to this Board and ask for extensions past 180 days?

MR. DONNELLY: You would have to ask.

MR. SHAW: Okay. Thank you.

(Time noted: 7:24 p.m.)

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

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

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DATED: November 29, 2011

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

----- X  
In the Matter of

FIDANZA SITE PLAN  
(2011-24)

North Plank Road  
Section 80; Block 7; Lot 7  
B Zone

----- X

CONCEPTUAL SITE PLAN

Date: November 3, 2011  
Time: 7:25 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: A.J. COPPOLA

----- 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 a conceptual site plan. It's  
4 the Fidanza site plan, project 2011-24, located  
5 on North Plank Road, Section 80; Block 7; Lot 7,  
6 located in the B Zone, being represented by  
7 Anthony Coppola.

8 MR. COPPOLA: Thank you very much. This  
9 is largely a site plan that was approved about  
10 three years ago by the Board. I'm actually going  
11 to start with what was previously approved  
12 because it's more of the old plan than there are  
13 changes to the new plan.

14 Basically what's going on here is my  
15 client, Franco Fidanza, is under contract to  
16 purchase the lot, and he desires a slightly  
17 different configuration of the building and a  
18 slightly different type of building than what was  
19 previously approved. He's purchasing from the  
20 current owner, Mid-Hudson, which is Steve  
21 Michalski.

22 What was previously approved was a  
23 single story, 3,975 square foot retail office  
24 building. This is right on North Plank Road next  
25 to Monroe Muffler. It's currently a vacant lot.

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2 It was a vacant lot and is currently a vacant  
3 lot. There was basically a one-way traffic flow  
4 pattern around the building, all of which was  
5 angled parking. There were I think 27 parking  
6 spaces previously.

7 There was kind of a projection in the  
8 building which we had gotten approved previously  
9 through this Board through architectural review.

10 There was a drive-through also.

11 The stormwater retention system is  
12 underground in the back.

13 There's a landscaping buffer in the  
14 back because there's residential. The R3 Zone is  
15 behind us.

16 And there is a sewer --

17 MR. HINES: Force main.

18 MR. COPPOLA: Thank you. Forgot my  
19 words there. A sewer force main that's a couple  
20 hundred feet west up North Plank Road, and that  
21 is still in place.

22 What's changed on the plan from what  
23 we're presenting tonight -- this is a new  
24 application. The other site plan, as Bryant had  
25 stated, was never signed. So what's changed is

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2 the drive-through is gone, the building is  
3 slightly larger. Still one story but it's about  
4 400 square feet larger than it was before. There  
5 were a few parking spaces in the front which we  
6 removed. The building is a perfect rectangle now  
7 as opposed to the irregular shape before. So  
8 there's no parking directly in front of the  
9 building. There is still the same circular flow  
10 of angled parking.

11 We've increased the square footage of  
12 the building, so we've increased the number of  
13 parking spaces by three. So there's parking now  
14 directly in back of the building in the loading  
15 area there also.

16 Largely it's the same site plan. The  
17 stormwater retention system is still underground  
18 in the rear. The landscaping buffer is identical  
19 to what was previously approved. The rest of the  
20 details are largely the same, the stonewall in  
21 the front, the site lighting, the landscaping, as  
22 I stated. The dumpster was relocated slightly.  
23 All the rest of those details, as well as the  
24 utility details, are all the same.

25 CHAIRMAN EWASUTYN: Okay. I'll turn to

1  
2 Bryant Cocks, Planning Consultant, for his  
3 comments.

4 MR. COCKS: As Anthony mentioned, these  
5 uses stayed the same so they're allowed in the B  
6 Zone.

7 The thirty parking spaces meet the  
8 requirement for the building size.

9 The Planning Board will discuss waiving  
10 the requirement for -- there are four parking  
11 spaces in the front of the site. A stonewall has  
12 been provided to mitigate the visual impact, so  
13 the Planning Board can discuss waiving that  
14 requirement in the design guidelines.

15 The signage plan has to be revised to  
16 show a chart for each storefront and the free-  
17 standing sign.

18 The EAF should be revised to show the  
19 information on threatened and endangered species  
20 on the DEC website.

21 We'll need amended approvals from  
22 Orange County Planning and the City of Newburgh  
23 for the increased sewage flow, and the DOT.

24 Amended ARB approval will also be  
25 required.

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2 CHAIRMAN EWASUTYN: Pat Hines, Drainage  
3 Consultant?

4 MR. HINES: We reviewed the previously  
5 submitted and approved stormwater management  
6 plan. The impervious area on the site remains  
7 the same, the building just takes up more of the  
8 previous parking or pavement.

9 What I do suggest is the Town has a new  
10 requirement for entering into a maintenance  
11 agreement for long-term operation and maintenance  
12 of the stormwater facilities, so that will be a  
13 new requirement since the plan was before us  
14 last.

15 The sewage plans have not been updated.  
16 They contain the previous square footage. That  
17 needs to be updated. I suggest you use the  
18 worst-case, probably the combination of the  
19 restaurants that are proposed, to come up with  
20 that. Those plans can be modified.

21 As Bryant just said, the City of  
22 Newburgh flow acceptance letter needs to be  
23 revised accordingly because they're keeping track  
24 of the Town's usage and approval for the  
25 hydraulic loading for these buildings.



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2 Those are the only changes that we  
3 would require.

4 CHAIRMAN EWASUTYN: Thank you.

5 Jerry Canfield, Code Compliance?

6 MR. CANFIELD: Pat had a comment with  
7 respect to the compliance of the twenty-foot  
8 access lane in front of the building. That's the  
9 same as the last proposal. It does comply with  
10 the fire code requirements. The access in the  
11 front, twenty feet, is fine with the sixteen feet  
12 around the building.

13 CHAIRMAN EWASUTYN: Comments from Board  
14 Members. Frank Galli?

15 MR. GALLI: No additional.

16 MR. MENNERICH: No questions.

17 MR. PROFACI: Nothing additional.

18 MR. FOGARTY: Anthony, can you just  
19 talk about that landscape buffer? There is a  
20 community up in the back. You said it was  
21 covered the last time but you may want to go over  
22 that.

23 MR. COPPOLA: Sure. It's identical to  
24 what was approved before. I'm not going to count  
25 what was here, but overall the quantity on the

1  
2 landscaping plan is 157 different items. I would  
3 say probably, just by eye, at least  
4 three-quarters of what we're planting is back  
5 there. It's quite a mix. The landscaping -- is  
6 it thirty feet or fifty feet?

7 MR. PROFACI: Thirty.

8 MR. COPPOLA: It's thirty feet. Thank  
9 you. The landscaping depth there is thirty feet.  
10 I mean it's quite heavy. Sometimes I think these  
11 things are actually too heavy once they become  
12 mature. It's going to be a pretty good buffer  
13 right from day one.

14 MR. FOGARTY: Thank you.

15 MR. COPPOLA: And varying too. It's  
16 not going to just look like screening.

17 MR. FOGARTY: Okay.

18 CHAIRMAN EWASUTYN: John Ward?

19 MR. WARD: No comment.

20 CHAIRMAN EWASUTYN: The only minor  
21 question is on the landscape legend you have  
22 Taxus as being -- you made the correction.

23 MR. COPPOLA: Okay.

24 CHAIRMAN EWASUTYN: And then actually  
25 you have Taxus and then you have Holly. They're

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two separate plants.

MR. COPPOLA: I see the Taxus and I know there's Holly in here. I remember that. Yes, Holly.

CHAIRMAN EWASUTYN: We have TH. You have the Latin name as Taxus and then you have the common name as Holly. That's just a typo.

MR. COPPOLA: I've got it. Thank you.

CHAIRMAN EWASUTYN: At this point I'll move for a motion from the Board to grant conceptual approval, to circulate to the Orange County Planning Department and to declare ourselves lead agency.

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.

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CHAIRMAN EWASUTYN: And myself.

Bryant, would you give us conditions as to waiving the design guideline standards for parking in the front?

MR. COCKS: Yes. Since the applicant has provided a stonewall and landscaping to mitigate the visual impact of the four parking spaces in front, it meets the intent of the design guidelines.

CHAIRMAN EWASUTYN: I'll move for a motion from the Board to waive the design guideline standard for parking in the front subject to the presentation that was made by our Planning Consultant, Bryant Cocks.

MR. MENNERICH: So moved.

MR. GALLI: Second.

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

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MR. WARD: Aye.

CHAIRMAN EWASUTYN: So carried.

The last item of Board Business is it's discretionary of the Planning Board if they would like to have a public hearing. I'll poll the Board Members at this time.

Frank Galli?

MR. GALLI: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: No.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I think we should. You do have a community up in back there that will probably want to have the opportunity to come down and speak about this project. I'm voting yes for the public hearing.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: Yes.

CHAIRMAN EWASUTYN: I'll vote not to hold a public hearing.

At this point the majority is in waiver of not holding a public hearing.

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MR. COPPOLA: We'll resubmit. Thank  
you.

Bryant, you'll do the Orange County  
Planning? I'll just get you --

MR. COCKS: Yes.

MR. COPPOLA: -- an additional copy.

MR. COCKS: And another copy for the  
DOT also.

MR. COPPOLA: Thank you very much.

(Time noted: 7:34 p.m.)

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

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

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DATED: November 29, 2011

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

----- X  
In the Matter of

MAGYAR/BUDGET TRUCK RENTAL  
(2011-04)

5465 Route 9W  
Section 9; Block 1; Lot 3  
B Zone

----- X

SITE PLAN

Date: November 3, 2011  
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  
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: FRANK VALDINA

----- 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 Magyar/Budget Truck Rental.  
4 It's a site plan, project number 2011-04, located  
5 at 5465 Route 9W, Section 5; Block 1; Lot 3,  
6 located in a B Zone, represented by Frank  
7 Valdina.

8 MR. VALDINA: The plans have been  
9 revised to meet the requirements of the  
10 Consultants.

11 We had met with Karen pertaining to the  
12 landscape, and the items that she had requested  
13 had been revised. I did receive a comment from  
14 her indicating something about technical items.  
15 I did try to -- I did provide information to her  
16 indicating where on the plans we had made all  
17 those revisions per her prior comments.

18 The water line information has been  
19 added pertaining to connecting to the existing  
20 water line on the east side of Route 9W.

21 Revised stormwater management had been  
22 submitted to the engineering consultant for their  
23 review. I believe there's still a few items --  
24 minor items outstanding on that. We're working  
25 with your office to resolve any outstanding

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issues.

On the question that was raised last time -- I raised a question last time pertaining to the utilization of the adjoining building for a temporary office. I submitted information to Jerry Canfield, as requested, for his input to the Planning Board prior to them making a decision.

The architectural review, I believe all the stipulations, which basically was the color of the roof, have been resolved. There aren't any outstanding issues pertaining to architectural review.

That's basically where we stand at this point.

CHAIRMAN EWASUTYN: I'll turn to Bryant Cocks, Planning Consultant, for comment.

MR. COCKS: I have no additional.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

MR. HINES: Our comments identify that the municipal water line has now been extended -- is proposed to be extended across 9W. A DOT permit for that will be required, but it

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2 addresses the issue with potable and fire flow  
3 water on the site.

4 I had a comment regarding the finished  
5 floor elevations which we discussed at work  
6 session regarding the flood plain development  
7 permit which will be required. That's been  
8 addressed.

9 As Mr. Valdina said, a stormwater  
10 management report has been submitted. We have  
11 some technical items on there but I believe we're  
12 well along the way to resolving those. There's a  
13 meeting scheduled for next week with John  
14 Szarowski from my office and Craig Marti from Mr.  
15 Valdina's office.

16 CHAIRMAN EWASUTYN: Jerry Canfield,  
17 Code Compliance?

18 MR. CANFIELD: During the work session,  
19 Frank, we had discovered, through an error of the  
20 Code Compliance Department, there's a section of  
21 the Code that typically applies to this type of  
22 occupancy, and it deals with outside storage.  
23 The section of the Code is 185-30. There's  
24 conditions that are to be met whenever there's  
25 outside storage of materials. What we discovered

1  
2 is that the storage bins on the north side of the  
3 property, through discussion it was learned that  
4 perhaps there may be some material or  
5 construction already taking place there. Perhaps  
6 some blocks are already stored or a concrete pad  
7 being poured. That we can discuss. That's a  
8 code compliance issue. If perhaps someone is  
9 jumping the gun, we can discuss that. But the  
10 point is that through that -- observing that  
11 brought attention to the outside storage section  
12 of the code which typically is a boilerplate  
13 that's affixed with these type occupancies. It  
14 was discovered that there is a fifty-foot setback  
15 from the property line of any of this type  
16 storage.

17           Looking at the plan, I believe there's  
18 a fifteen-foot buffer and then -- we did not  
19 scale it but I believe it's a twenty-on-one scale  
20 there. It looks like maximum what you have is  
21 thirty-five, thirty-eight feet.

22           So the options to correct this problem  
23 would be, number one, you would have the option  
24 of going to the Zoning Board for a variance. And  
25 I know it's late in the process for that,

1  
2 however, like I said, it was an oversight on the  
3 Code Compliance Department. We did not notice  
4 this. Your second option would be to perhaps  
5 make the bins smaller so they can comply with the  
6 fifty-foot regulation. That's your options on  
7 how to handle that scenario.

8 MR. DONNELLY: There's actually a third  
9 option.

10 MR. CANFIELD: I'm sorry.

11 MR. DONNELLY: The restriction is  
12 normally ten feet unless the property is located  
13 next to either a residential district or a  
14 property in residential use. If your client was  
15 to abandon the residential use for the adjoining  
16 piece of property, then the setback requirement  
17 would be ten feet.

18 MR. VALDINA: This building right now  
19 was a single-family residence. It is currently  
20 vacant.

21 MR. DONNELLY: It's vacant now but it  
22 would have to be vacant for more than a year.

23 MR. VALDINA: It could not be  
24 utilized --

25 MR. DONNELLY: We would need something

1  
2 from your client that said he surrendered any  
3 right for the protected nonconforming use of that  
4 property, then we would be back to the ten-foot  
5 setback which you meet. So you would need  
6 delivered to us something signed that says that.

7 MR. CANFIELD: Thank you, Mike.

8 One question, while we're talking about  
9 that residence, and I think we'll get into the  
10 temporary occupancy in a little bit, however the  
11 Chairman chooses to handle that, but the question  
12 I have on that is that the -- is that the  
13 building that is proposed for the temporary  
14 office?

15 MR. VALDINA: No.

16 MR. CANFIELD: It is not. It's the one  
17 out on 9W?

18 MR. VALDINA: Yes.

19 MR. CANFIELD: So if that be the case,  
20 then you're looking at perhaps abandoning the  
21 residential use for both of those structures?

22 MR. VALDINA: This structure was never  
23 intended to be used for a residence. That is in  
24 the B Zone.

25 MR. CANFIELD: It's existing

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nonconforming as a residence in a B Zone.

MR. VALDINA: It's vacant.

MR. CANFIELD: That also is vacant?

MR. VALDINA: Yes.

MR. CANFIELD: There becomes ramifications, Frank, with trying to make that a commercial. Even though it's vacant, the Code -- the provisions of the Code allows twelve months of an existing nonconforming before it loses it's existing nonconforming protection.

MR. DONNELLY: But that one is separated by the other lots. I don't think it's important for the fifty-foot setback. Right?

MR. CANFIELD: That's totally in regard to the temporary office.

MR. DONNELLY: I guess what Jerry is telling you is if you move temporarily into that, the time you're there is the clock is running on the one year, and if that time exceeds one year, you will not be able to restore the residential use.

MR. VALDINA: Fine. Unless the temporary office, the intent is only to use it until this project is complete, and then they'll

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move into the building.

MR. DONNELLY: The Planning Board understands that to be your application for the waiver that is conditioned upon it being temporary only.

MR. VALDINA: Yes.

CHAIRMAN EWASUTYN: Frank, for the Board's benefit can you discuss the waiver? You're asking them for the extension.

MR. VALDINA: The temporary office? It's under Section 185-56.

CHAIRMAN EWASUTYN: Can you just put it into words for us?

MR. VALDINA: Basically the existing building just to the north of this site, roughly 90 feet or so north of the site, Magyar Lane is right in here. While this facility is under construction, the intent is selling this existing property, moving the rental business out, use this for the office for the rental business, temporarily store in the front here while they operate -- you know, construct the site to keep the truck rental business in operation, especially getting into the holiday season. I



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guess it's quite an active period of time for them.

CHAIRMAN EWASUTYN: Mike, do you want to elaborate?

MR. DONNELLY: There is a provision of the Code that does allow building under 2,500 square feet a discretionary exemption, granted exemption by the Planning Board of the requirement of site plan approval. It is not an entitlement but rather a discretionary waiver. I'm not really familiar with the property that we're talking about here. I'll need some more information to complete the resolution.

In the discussion at work session, I think the thought was if it was to be granted it would need to have appropriate safeguards. For instance, that it could not be occupied for the temporary use until some trigger event occurred, like issuance of a building permit for the new building, and then you would need something at the other end, that after a certificate of occupancy was issued for the new building, the use of that building on a temporary basis would have to cease within a fixed period of time.

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2 What we're trying to avoid, obviously, is the  
3 exemption being granted on a permanent basis,  
4 which is not what you're asking for and wouldn't  
5 be the Planning Board's intent, by just doing  
6 nothing with this site here.

7 MR. VALDINA: Right. In the schedule I  
8 had given to Jerry it indicated there were two  
9 conditions, one had to do with the utilization of  
10 the office was ten days after a CO was issued for  
11 this building and for the temporary parking of  
12 the vehicles. Once this fenced-in area was  
13 completed, then they would move back into that  
14 area, back further onto the site.

15 CHAIRMAN EWASUTYN: Jerry --

16 MR. VALDINA: That would be a ten-day  
17 time period to move.

18 CHAIRMAN EWASUTYN: Jerry, what would  
19 you feel most comfortable with? You said you  
20 would like to have the language to compliment  
21 each other.

22 MR. CANFIELD: That's correct. I think  
23 they should be equal. That's what we had  
24 discussed, the fencing and everything on that  
25 site.

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You will not be able to get a C of O on the site until all the site provisions are met. They're basically one of the same.

MR. VALDINA: I wasn't referring to a CO for the fence area. I was saying once it was physically completed, the site work, even if they're still working on the building, to try to speed that process up to get them, you know, into the back. I'll do anything that's applicable. I don't see a problem with it. If you want to tie everything into a CO for the entire site --

MR. CANFIELD: It may be easier to make the language the same.

MR. HINES: I don't think you're going to want him using the site for any purpose without a CO.

MR. CANFIELD: Correct.

MR. VALDINA: They may have to move something to finish up in the front.

MR. DONNELLY: I thought we were moving the temporary operation to the lot ninety feet down the road?

MR. VALDINA: The office is here.

MR. DONNELLY: So you're going to move

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the office piece there?

MR. VALDINA: Right.

MR. HINES: The trucks, too.

MR. VALDINA: Store the trucks in the front here, which basically most of the work is behind that area.

MR. CANFIELD: I didn't understand that with this sketch that I have, Frank.

MR. VALDINA: A temporary storage area fifty feet back from the property line.

MR. HINES: We thought everything was on another lot. The temporary was all on the other lot.

MR. VALDINA: Oh, I honestly don't know if they have the room to put them on the adjoining lot. That was the --

MR. CANFIELD: That's why he split it.

MR. VALDINA: Yeah.

CHAIRMAN EWASUTYN: That seems rationale in certain ways.

MR. DONNELLY: What level of the screening has to be up then if we're going to do it the way it's being proposed?

MR. HINES: This is going to be right

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out front, the trucks.

MR. CANFIELD: There is no screening.

MR. VALDINA: There was a ZBA variance granted where they could store the trucks on this lot back in '89.

MR. CANFIELD: That is correct. I remember seeing that.

CHAIRMAN EWASUTYN: Frank, when do you -- weather conditions allowing, when do you think -- how many months do you think it will take to complete this site where you would be requesting the Building Department to issue a certificate of occupancy?

MR. VALDINA: Obviously with the landscaping, I don't think much can be done this year, but everything else -- they're going to get in there and start working. As was mentioned, I know they had the concrete blocks up there for the dividers on the storage areas. I know they've been anxious to get going in and start doing the stormwater management and so on. I told them we have to wait until they get final approval.

MR. GALLI: They filled the blocks.

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They filled them high with material. The blocks are pretty high.

MR. VALDINA: They're not supposed to be any higher than the fence.

MR. GALLI: They're higher than the fence.

MR. VALDINA: Then they'll have to remove them.

MR. CANFIELD: We talked about going up tomorrow and looking at it.

CHAIRMAN EWASUTYN: So Mike, I think to maybe go back, you're saying screening of the truck --

MR. DONNELLY: If they have a variance for that, I guess they're permitted. My thought would be that -- I think this will attempt to avoid this thing becoming permanent, and that is that none of the shifting of the temporary use to either this site or the office use down the road can occur until a building permit is issued for this project so that we know that there's going to be some construction underway. And at the other end of the tunnel, all of the temporary use must cease and move into the proposed structures

1  
2 and areas within ten days after issuance of a  
3 certificate of occupancy for the new building.  
4 It's not perfect but it's something.

5 CHAIRMAN EWASUTYN: They would have the  
6 final site plan approval and then final stamped  
7 plans, submit to the Building Department for a  
8 building permit, and then that would begin to  
9 trigger --

10 MR. DONNELLY: Then they could begin to  
11 move into the two temporary sites. They would  
12 have to move out of the temporary sites within  
13 ten days after a CO.

14 CHAIRMAN EWASUTYN: Frank, is that  
15 satisfactory to you and your client?

16 MR. VALDINA: I believe it would be,  
17 yes.

18 CHAIRMAN EWASUTYN: Comments from Board  
19 Members. Frank Galli?

20 MR. GALLI: No.

21 MR. MENNERICH: Frank, on the change of  
22 where the residential property is back to  
23 business, is that something you have to review  
24 with the -- with your client or --

25 MR. VALDINA: This office building?

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They're the ones that requested this be used temporarily.

MR. DONNELLY: We're talking about a permanent surrender of the right to conduct residential use on that lot.

MR. VALDINA: Well he -- all I can say is the client advised me that this is zoned business, it's going to be utilized as business. They want to use it for temporary office. Beyond that, like I say, this was a residence, it's now vacant. I don't know what their intended use is. One of the conditions would be that it can not convert back to a residential use unless they get a variance or whatever.

MR. DONNELLY: If they're on the same lot, none of them can be converted back.

MR. VALDINA: Right. I believe that is --

MR. DONNELLY: I think what Ken is asking you is he wants to make sure your client is agreeing to that before we take action because that's going to be one of the conditions of the approval.

MR. VALDINA: To be honest with you, at



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this point I don't think they have too much of an option.

MR. CANFIELD: Does that twelve-month period kick in, Mike?

MR. DONNELLY: If they surrender the right to use it, they don't have to worry about the twelve months. It might catch up to the twelve months anyway, but that's not satisfactory to the Planning Board.

MR. VALDINA: If there's currently a ten-month flexibility, meaning they can utilize it for a temporary office, as I said their intent is to get in there and get this done as soon as possible.

MR. DONNELLY: The point is in order for us to allow you to have the ten-foot setback of storage materials, there can be no residential use on the adjoining lot ever.

MR. VALDINA: On the adjoining lot or just within a certain distance?

MR. DONNELLY: On the adjoining lot.

MR. VALDINA: Okay.

MR. DONNELLY: So unless you want to go back to fifty feet or get a variance. If you

1  
2 want to stay with the ten-foot setback, your  
3 client is going to have to forever surrender the  
4 right to conduct residential uses on the  
5 adjoining property.

6 MR. VALDINA: Can we get the condition  
7 on either one of the options in the meantime? In  
8 other words, I can go back --

9 MR. DONNELLY: It's up to the Board. If  
10 they want to have a resolution that gives you the  
11 three options. The one option would require you  
12 to come back for an amended site plan. I think  
13 it's easier for you to find out which option your  
14 client wants. It's up to the Board. We can make  
15 such a condition.

16 CHAIRMAN EWASUTYN: The other way to  
17 manage this would be to allow you the time to  
18 discuss it with your applicant, with the owner,  
19 and then under Board Business the meeting of the  
20 17th, we would bring you forward and finalize a  
21 resolution with the understanding that your  
22 client selected A, B or C of this three-part  
23 approval. Is that all right with you?

24 MR. GALLI: How long has the house been  
25 empty, Frank?

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MR. VALDINA: Do you remember the little two-lot subdivision? I think July he moved out of there.

MR. GALLI: They almost got a year coming up. Six months.

MR. VALDINA: That was the son. The son lived here and they built a new house on Larabee Lane. That little two-lot subdivision, they moved in there.

CHAIRMAN EWASUTYN: What would you prefer at this point, Frank?

MR. VALDINA: I would prefer some type of approval.

CHAIRMAN EWASUTYN: I knew you were going to do that, which is understandable.

Mike, do we have to make mention of our discretion because the building is under 2,500 square feet?

MR. DONNELLY: I don't even know what lot this is. I don't have any information yet. I think we're going to need a second resolution for the grant of the exemption for the 2,500 square feet for this temporary use. There will be a resolution for this site, the site plan we have

1  
2 been working on, and a separate resolution that  
3 will refer to each other for the exemption for  
4 the adjoining lot. I will need some information,  
5 tax map number, so on and so forth.

6 MR. VALDINA: I have it right here.  
7 Section 8; Block 1; Lot 8.2.

8 MR. DONNELLY: Okay. That's a part.  
9 That resolution -- you could vote on them at the  
10 same time, they will dovetail. I think in  
11 addition to the regular conditions that I go  
12 through, the temporary -- the exemption for the  
13 temporary use would be granted in a separate  
14 resolution with the conditions that I outlined  
15 before, the note that no use of either of the  
16 temporary sites, because we're talking about two  
17 temporary sites, until a building permit is  
18 issued for a structure on the approved site plan  
19 site, and a requirement that those operations  
20 cease ten days after a CO. And then on the  
21 resolution granting the exemption, that would be  
22 conditioned specifically on it being of a  
23 temporary nature with the same conditions.

24 In the site plan resolution we would  
25 have to have the three alternatives, that the

1  
2 applicant will either deliver a surrender, a  
3 permanent surrender for the right of residential  
4 use on the adjoining parcel in order for the site  
5 plan to be approved as is, or obtain a variance,  
6 or return with an amended proposal showing the  
7 fifty-foot setback being satisfied.

8 CHAIRMAN EWASUTYN: Are you satisfied  
9 with that, Frank?

10 MR. VALDINA: Yes.

11 CHAIRMAN EWASUTYN: Comments from -- do  
12 you have anything to add?

13 MR. MENNERICH: No.

14 CHAIRMAN EWASUTYN: Joe Profaci?

15 MR. PROFACI: No.

16 MR. FOGARTY: Frank, you don't know if  
17 your client is going to agree with this?

18 MR. VALDINA: As I said, at this point  
19 they'll agree to one of those options. They  
20 don't have much option. My understanding is this  
21 is basically sold. They have to move the  
22 operation. If that's a condition of moving,  
23 they're going to have to live with it.

24 MR. CANFIELD: John, just one last  
25 question for Frank.

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Lead time on the building, do you know how long it will take the building --

MR. VALDINA: I'm surprised it's not here now. They ordered it. They said it would take I think six to ten weeks, and they ordered it probably about six weeks ago. That's what I said. Plus the sale of this sped it up a lot quicker. They thought they would have this done by the first of November but --

MR. DONNELLY: The more mundane conditions of the site plan resolution would be a sign off from Pat's office on the deficiencies in the stormwater report, a letter from Karen signing off on the technical deficiencies in her memo of September 30th. The approval is subject to the review and approval of the water line crossing by the DOT as well as the curb cut, the issuance of a flood plain development permit from Jerry's office, the review of cross access easement agreements to my satisfaction. I think we covered ARB approval back in September but you do need to complete the Architectural Review Board application because it wasn't complete. We will have the outdoor storage conditions. I'm

1  
2 not going to read them but they're in the  
3 resolution. They're those that are contained in  
4 Section 185-30. Beyond that, we put a  
5 prohibition on the outdoor sale of merchandise.  
6 In other words, you can display it and store it  
7 outside but you can't have cash registers and  
8 sales out in the lot, they must take place inside  
9 the buildings. There will be a requirement of a  
10 landscape security and inspection fee, a  
11 stormwater improvement security and inspection  
12 fee together with the stormwater control facility  
13 maintenance agreement. And the standard  
14 condition that no outdoor fixtures or amenities  
15 not shown on the approved site plan may be  
16 constructed.

17 CHAIRMAN EWASUTYN: John Ward -- Tom,  
18 are you finished with your comments?

19 MR. FOGARTY: Yes.

20 CHAIRMAN EWASUTYN: John, I didn't get  
21 to you yet.

22 MR. WARD: Frank, if you can really  
23 emphasize the height of the storage bin because  
24 that's important.

25 MR. VALDINA: I'll have to check to see

1  
2 what they did. I mean they've been advised that  
3 nothing can be stored higher than the fence.  
4 Originally it was ten, they wanted to lower it to  
5 eight feet, we lowered it to eight feet. Those  
6 bins are going to be limited to the eight feet  
7 height.

8 MR. WARD: Thank you.

9 MR. DONNELLY: Those are the two  
10 resolutions. I think you can vote on them  
11 together.

12 CHAIRMAN EWASUTYN: And bonding also.

13 MR. VALDINA: That application had been  
14 submitted.

15 MR. DONNELLY: If it has, fine.

16 CHAIRMAN EWASUTYN: Town Board approval  
17 of the landscape bond amount?

18 MR. DONNELLY: Yes. And stormwater.

19 CHAIRMAN EWASUTYN: Any questions from  
20 Board Members?

21 (No response.)

22 CHAIRMAN EWASUTYN: Okay. Then I'll  
23 move for a motion to grant site plan approval for  
24 Magyar/Budget Truck Rental subject to the  
25 conditions presented by Mike Donnelly in both



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resolutions.

MR. GALLI: So moved.

MR. PROFACI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. Thank you.

MR. VALDINA: Thank you, gentlemen.

(Time noted: 8:00 p.m.)

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

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

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DATED: November 29, 2011

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

----- X  
In the Matter of

JPJR HOLDINGS, LLC  
(2011-19)

Request for a Referral to the Zoning Board of  
Appeals for a Use Variance

----- X

BOARD BUSINESS

Date: November 3, 2011  
Time: 8:00 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  
JOHN A. WARD

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

----- X

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

1  
2 MR. PROFACI: We have two items of  
3 Board Business. The first -- both of these  
4 are discussions. The first is JPJR Holdings,  
5 LLC Subdivision, project number 2011-19.

6 The applicant is requesting to be  
7 referred to the ZBA for a use variance on one  
8 lot in a commercial zone to be used for a  
9 single-family residence.

10 CHAIRMAN EWASUTYN: Mike Donnelly at  
11 this point will discuss with the Board the  
12 unlikelihood of this happening to the Planning  
13 Board.

14 MR. DONNELLY: I gave you a letter on  
15 this. Quickly, Section 277, Subdivision 6 of the  
16 Town Law, which is the section under which you  
17 quite frequently refer area variances to the  
18 Zoning Board of Appeals, is quoted in the letter.  
19 In essence, in context it used to be that when an  
20 applicant made an application to a planning  
21 board, site plan or subdivision, and their plan  
22 did not comply with bulk table dimensional  
23 requirements, setbacks and the like, they would  
24 have to, in addition, apply to the code  
25 compliance department for a building permit.

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2 Some municipalities would actually require they  
3 have construction plans and pay the fee for the  
4 building permit, get turned down just to appeal  
5 to the zoning board. That was cumbersome but,  
6 worse yet, it lost the coordination that might  
7 exist between the Planning Board taking a look at  
8 the file first and then giving a report to the  
9 Zoning Board. So ten years ago or so they made  
10 this amendment to the section which says they can  
11 go right from the Planning Board to the Zoning  
12 Board for the area variance together with the  
13 Planning Board's report on any concerns or  
14 recommendations they may have. That section only  
15 authorizes that for area variances, not for use  
16 variances. So the traditional method of getting  
17 turned down by the building inspector or code  
18 compliance department for the use and then  
19 appealing that denial letter to the Zoning Board  
20 for a use variance is the only way they can get  
21 there. There's no statutory authority to refer  
22 them to the Zoning Board.

23 I think we had one of these once before  
24 but I don't remember for sure. When I saw the  
25 adding of that to the Board Business, I sent out

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JPJR HOLDINGS, LLC

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a quick e-mail and followed it with a letter here today.

CHAIRMAN EWASUTYN: You did cc the engineer?

MR. DONNELLY: Yes.

CHAIRMAN EWASUTYN: Questions from Board Members?

(No response.)

CHAIRMAN EWASUTYN: Jerry?

MR. CANFIELD: I have no issue with that.

CHAIRMAN EWASUTYN: Thank you.

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

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

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

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DATED: November 29, 2011

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

----- X  
In the Matter of

ELM FARM SUBDIVISION  
(2000-09)

Request for an Extesion of Conditional Preliminary  
Subdivision Approval

----- X

BOARD BUSINESS

Date: November 3, 2011  
Time: 8:04 p.m.  
Place: Town of Newburgh  
Town Hall  
1496 Route 300  
Newburgh, NY 12550

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

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

----- X

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



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MR. PROFACI: The second item is the Elm Farm Subdivision, project 2000-09. The applicant is requesting an extension of preliminary subdivision approval which will run from November 4, 2011 to May 3, 2012.

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

MR. FOGARTY: So moved.

MR. GALLI: Second.

CHAIRMAN EWASUTYN: I have a motion by Tom Fogarty. I have a second by Frank Galli. Any questions on 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.

CHAIRMAN EWASUTYN: Myself. Thank you. Bryant, you'll notify Dan Sullivan, I know, on the approval.

I'll move for a motion to close the

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Planning Board meeting.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich, a second by Joe Profaci. I'll ask for a roll call vote.

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

(Time noted: 8:05 p.m.)

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

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

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DATED: November 29, 2011