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

----- X

In the Matter of

PATTON RIDGE SUBDIVISION
(2012-18)

Patton Road and Route 52
Section 47; Block 1; Lot 52
R-2 Zone

----- X

CONCEPTUAL SEVENTEEN-LOT
RESIDENTIAL SUBDIVISION

Date: October 4, 2012
Time: 7:00 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

APPLICANT'S REPRESENTATIVE: KIRK ROTHER

----- X

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

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MR. BROWNE: Good evening. Welcome to the Town of Newburgh Planning Board meeting of October 4, 2012. 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.

MR. BROWNE: Present.

CHAIRMAN EWASUTYN: Present.

MR. FOGARTY: Here.

MR. WARD: Present.

MR. BROWNE: The Planning Board has professional experts that provide reviews and input on business before us, including SEQRA determinations as well as code and compliance details. At this time I would ask them to introduce themselves.

MR. DONNELLY: Michael Donnelly,
Planning Board Attorney.

MS. CONERO: Michelle Conero,
Stenographer.

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

MR. HINES: Pat Hines with McGoey,

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Hauser & Edsall Consulting Engineers.

MR. COCKS: Bryant Cocks, Planning
Consultant.

MR. BROWNE: At this time I'll turn the
meeting over to Joe Fogarty -- Tom Fogarty.

MR. FOGARTY: Would everyone please
rise for the Pledge of Allegiance.

(Pledge of Allegiance.)

MR. FOGARTY: Would everyone please
turn off their cell phones. Thank you.

MR. BROWNE: The first item of business
we have this evening is Patton Ridge Subdivision,
project number 2012-18. This is a conceptual
seventeen-lot residential subdivision being
presented by Kirk Rother.

MR. ROTHER: Good evening, everybody.
Kirk Rother representing the applicant. This is a
new application before the Planning Board for a
proposed seventeen-lot, single-family residential
subdivision on approximately 9 1/2 acres of land
situated on Patton Road, which is right here, and
New York State Route 52. It's currently one tax
parcel. It's a little unique in that Patton Road
bisects the two. The lands north on this map,

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just so you know, is to the left. The lands to the north are about 4 1/2 acres in size. To the south is similar. The deed to the property currently crosses Patton Road and doesn't exempt it out. If we were to convey a 50-foot wide right-of-way to the Town for Patton Road proper, that's about another 1/2 acre or a little less. The property is currently in the R-2 zoning district. It was the recipient of a recent zone change. The surrounding area is also in the R-2 zoning district. It was in the B zoning district earlier this year. So the proposed plan is ten single-family residential lots on the lands north of Patton Road. That's about 4 1/2 acres in size. Access to those lots would be by means of a cul-de-sac approximately 550 feet in length. On the south side of Patton Road we have seven additional lots served by a cul-de-sac approximately 250 feet in length.

The entrance points to the cul-de-sacs were chosen given the sight distance on Patton Road. For those of you familiar with it, and I'm sure all of you are, this is not such a desirable intersection with Patton Road and Route 52, then

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we climb uphill and in the area where the road is proposed it's a crest of a hill, so there's a lot of sight distance in both directions.

There is an existing dry sewer -- I believe it's a dry sewer manhole. I've seen it myself as far as opening it. It's at the intersection of 52 and Patton Road. It's actually a stub that goes underneath Route 52 with the intent to sewer this area at some point in the future, which we feel is now. There's also water along Route 52, hydrants on 52, and there's also water on Patton Road just west of the property. I do not know if Mennerich is served by central water and sewer but I do know that Gibraldi has a hydrant right in the front yard. We would propose to connect the two water mains and create a water loop with new water mains into our site. The terminus would be at the cul-de-sacs. Sewer would be accomplished by gravity sewer all the way out to the existing sewer manhole on Patton Road.

Stormwater management we're proposing to accomplish by conveyance of the stormwater from northerly parcel, under Patton Road, into

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one stormwater management pond on the southerly parcel. For now we show that it's a separate lot, assuming that the Town would want it as a separate lot. It's about 1.2 acres in size.

These building envelopes are 28 feet by 45 feet. As far as the size of the structure proposed, again this is just a concept, similar in size to the existing buildings you can see in Capital Court and Countess Court.

One thing that's on this plan that's not on your plan is one of the comments I received from Mr. Cocks. It has to do with the buildable area analysis. On this plan I've added the shading of slopes over 25 percent. It's pretty much this area here adjacent to Route 52. There's a small patch in the area of lot 11. There's also the requirement of a 4,500 square foot buildable area which I've added to this plan, and that's these rectangular shaped boxes you see here. Those are 50 feet by 90 feet.

At this point we're here to present this in concept and get any feedback that the Board may have.

CHAIRMAN EWASUTYN: Frank Galli?

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MR. GALLI: Nothing yet.

CHAIRMAN EWASUTYN: Tom Browne?

MR. BROWNE: Not for me.

MR. FOGARTY: I'll wait until the consultants make their comments.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Just for the record, I wanted to let you know that the Mennerich that's listed there is not me, it's my nephew.

MR. ROTHER: Okay.

MR. HINES: Does he have Town water?

CHAIRMAN EWASUTYN: Does he have Town water?

MR. MENNERICH: I don't know.

CHAIRMAN EWASUTYN: I'm like Tom Fogarty, I'll wait to hear from our consultants. Jerry Canfield?

MR. CANFIELD: I don't have anything other than we discussed some items at the work session. Most of the other consultants will cover pretty much what we discussed. I don't have anything additional.

CHAIRMAN EWASUTYN: Pat Hines, Drainage Consultant?

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MR. HINES: Our first comment has to do with cleaning up some of the general notes and details referencing the Town of Newburgh requirements.

The house on lot 16 is across the buildable envelop which can be cleaned up.

I have a comment here to talk to the highway superintendent regarding the short cul-de-sacs. I know the Chairman talked with the town engineer and he doesn't see that as a concern. Just check with the town highway superintendent. I can recall in the past where they didn't like short Town road cul-de-sacs.

CHAIRMAN EWASUTYN: What Mr. Osborne had said was where the Town does have a concern is too many driveways off a cul-de-sac and then maintaining the snow during the winter, what do they do with it.

MR. HINES: I included that later as a similar comment where the driveways and cul-de-sacs come together.

The sewer on lot 10, or for lot 10 shows a lateral running down the proposed road. We're suggesting that the system have an

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additional manhole and that be part of the Town system rather than running laterals perpendicular to the road there.

We're looking to address, for the stormwater management, runoff from the roof and footing drains, roof leaders. We've had some complaints on other parts of Delaware Drive that were developed where there was some additional runoff from roofs and gutters and such. When you do that make sure you're picking up things that would come off the rear of the houses to not send more water towards of the Delaware Drive development.

We need a surveyor of record for the plans.

DEC and Health Department approval for the water main will be required, for the extension.

The City of Newburgh flow acceptance letter will be needed before any approvals can be issued by the Planning Board. That will be a letter you'll send to Jim Osborne, the Town Engineer, just identifying the hydraulic loading calculations from the project, and then he'll

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forward that to the City of Newburgh.

Are you in the sewer district?

MR. ROTHER: I checked today with the tax assessor and her records do not show this parcel as being in the sewer district.

MR. HINES: Okay. There will need to be an outside user agreement with the Town Board then to move that forward also, which should be done before the City of Newburgh flow acceptance letter even.

You've acknowledged you are in the water district and you're going to do that extension.

We're looking for you to show that existing water main location on future, more detailed plans, where that is on Patton Drive and Route 52.

Standard notes for the Town's water and sewer system need to be on the plans. My office can provide those to you. If you send me an e-mail I'll ship those over to you so you have those.

Easements for water and sewer as well as grading will be required because the sewer

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will be running through cross lots to take advantage of the topography there and so on.

Once the surveyor finishes his work, the minuses on those 15,000 square foot lots have to go away. They have to be 15,000 or plus, no minuses.

That's all we have.

CHAIRMAN EWASUTYN: Are you in agreement?

MR. ROTHER: Yeah.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: My first comment was just the labeling of the lots. There's two lot 10s, so that just needs to be revised.

MR. ROTHER: I apologize.

MR. COCKS: Setback lines should be shown on each lot for the front, side and rear yards.

You did mention the buildable area requirement which you met.

The bulk table needs to be expanded, once the surveyor gets out there, to show the accurate dimensions of each lot.

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Pat just mentioned the survey sheet.

When the plans are going forward and the landscape plans are devised, street trees will be required for each cul-de-sac.

There are some existing stonewalls on Patton Road. I didn't know if you were going to leave those or if they were going to be removed during construction. Since it's already there, if you could just remove as little as possible for the entrances and leave the rest of the aesthetic features, that would probably be nice.

Other than that, I just have a list of nine outside agencies that should receive the plans. We should issue lead agency and also the narrative letter that's going to need to be sent for 500 feet from the property lines. I'll need to get the list from the assessor's office and then I can write the narrative letter and send it out.

CHAIRMAN EWASUTYN: Okay. Additional comments from anyone?

MR. GALLI: I have a comment. Are these single-family, one-family homes?

MR. ROTHER: Yes.

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MR. GALLI: Later on do we have ARB because it's over ten lots?

MR. DONNELLY: More than ten, yeah.

MR. ROTHER: We're aware that we'll have to make the application. I don't have any renderings or anything yet.

MR. GALLI: Are they going to be ranch styles or colonials or --

MR. ROTHER: Perhaps bilevels. I really don't know. It could be bilevel or colonial.

Tom, do you have any --

MR. ANNARUMO: It depends on the market. Bilevels, capes, ranches, maybe a small colonial. We're going to see.

MR. ROTHER: I have one comment I'll make to Mr. Cocks regarding the stonewalls. We have absolutely no problem preserving them to the greatest extent we can. One thing that will be a dramatic impact on our ability is where we put the water main on Patton Road. I assume the Town is going to want it in the shoulder of the road versus -- one side of this road is basically going to get ripped up in its entirety.

CHAIRMAN EWASUTYN: Jerry Canfield,

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Code Compliance?

MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: I'll move for the Board to grant conceptual approval and declare our intent for lead agency.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you.

MR. DONNELLY: Do you want to send it to Orange County Planning as well?

CHAIRMAN EWASUTYN: Speak with Bryant as far as additional plans and the coordination

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with the interested and involved agencies.

MR. ROTHER: Okay. One other thing for the record.

I think, Mr. Cocks, and I left it out in the EAF, one other involved agency is probably going to be the State DOT. Although we don't have a highway entrance permit, there will be work in the right-of-way.

CHAIRMAN EWASUTYN: Good.

MR. ROTHER: Thank you very much.

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

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

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

DATED: October 25, 2012

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

----- X
In the Matter of

LANDS OF HAMMOND
(2004-27)

Cronk Road off Orchard Drive
Section 1; Block 1; Lots 5.1, 5.3 & 63
AR Zone

----- X

THIRTEEN-LOT SUBDIVISION

Date: October 4, 2012
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
CLIFFORD C. BROWNE
KENNETH MENNERICH
THOMAS P. FOGARTY
JOHN A. WARD

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

APPLICANT'S REPRESENTATIVE: KEN LYTLE

----- X

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

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MR. BROWNE: Our next item of business is Lands of Hammond, project number 2004-27. This is a thirteen-lot subdivision being presented by Ken Lytle.

MR. LYTLE: Good evening. It's been awhile since the project has been before you. Mr. Hammond has been working with this. And has a lot of the road construction.

We were back before the Board of Health, have Board of Health approval.

We have the comments from the consultants and are working back and forth with Pat to come up with some system to address all the stormwater issues. That's about it.

CHAIRMAN EWASUTYN: Pat, do you want to bring us along?

MR. HINES: Our first comment has to do with the requirements for filing the map with the County. Some of the texts that are crossing over each other needs to be cleaned up.

Ken, if you could send me the Health Department letter, too. I didn't have that in my file. You said you have that. That's fine.

We're suggesting you remove the roof

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and footing drains that are shown in the wetland adjacent area to avoid the need for those permits.

My office has reviewed a stormwater management plan for the project. We've been working with the applicant's representative. As you're aware, the project has a 2002 job number. The stormwater regulations have changed several times since then, and we're working with the applicant's representative to meet the intent of those regulations, realizing that the road was constructed several years ago -- many years ago.

There's going to be individual stormwater management facilities on each of the lots. We're okay with that concept but we want to have them shown on the plans, kind of buyer beware, and notes requiring that those be installed prior to issuance of the CO.

This project drains to a large DEC regulated wetland, so flow attenuation isn't a large factor here. It's a huge wetland area that they've avoided impacts to. That will attenuate the stormwater and the water quality will be handled on each individual lot with a proprietary

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Cultech buried galley system. There does need to be notes on the map, buyer beware. The building department needs to be aware of those improvements. That's the only comments we have.

CHAIRMAN EWASUTYN: Jerry Canfield, Code Compliance?

MR. CANFIELD: Just one comment. In light of what Pat just said, I requested, and we talked at the work session about, including that as a condition of approval in the resolution, should the Board choose to move forward with this, because it is very important that the building department needs to be aware of before issuance of a C of O. If these lots are sold, the prospective buyers need to be aware of the system that needs to be put in. It's an expensive system and it's important to the stormwater management regulations. It's imperative that everybody is aware they are required for each lot.

MR. LYTLE: Would an as-built inspection and like what we do for the septic be required for those also?

MR. CANFIELD: I'm sorry, say that again.

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MR. LYTLE: Would an as-built of those, similar to what we do for the septic --

MR. CANFIELD: Yes. They can be included in the final survey.

MR. HINES: That same plan that's shown. That helps in the long run so that people don't put their pool over those things. They start digging an underground pool and hit these, or the sheds.

MR. LYTLE: That never happens.

MR. HINES: Yeah.

CHAIRMAN EWASUTYN: Bryant Cocks, Planning Consultant?

MR. COCKS: All the lots are the same as when we granted preliminary approval. The only new addition is the 5,000 square foot buildable area requirement which I did speak to Ken today and he is aware of.

CHAIRMAN EWASUTYN: All right. Where do we go from here tonight?

MR. HINES: I'm okay with a conditional final approval based on our technical memo as a condition.

MR. GALLI: John, at the workshop we

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were talking about --

CHAIRMAN EWASUTYN: I'm going to bring that up now.

MR. GALLI: I don't know if this is what you were going to bring up. Ken says the road's completed or it's in.

MR. LYTLE: It's probably 80 percent. Curbs are in, grass is established, utilities are all in, the subbase is in. A good chunk of it has actually been blacktopped. We've been working with Darrell and Jim Osborne to finalize the section that had to be removed. That's already been done.

MR. GALLI: That's the part I was talking about.

MR. LYTLE: He's in contact with a blacktopper to do that. We told him to hold off until we got through tonight in case anything changes. He's not sure if he wants to actually go ahead and address the blacktop now or bond it and leave it as topcoat. He's talking about that. Before he resubmits the drawings we have to have the bond posted or have that stuff installed and signed off.

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MR. GALLI: That's the question.

CHAIRMAN EWASUTYN: What we discussed at the work session or prior to this application coming back, because you reminded me of the fact that I called you one time and I said Mr. Hammond, this would be the last time we would call you for money, and then when I called several weeks later you said to me oh a guy once called me and said there would be no more money. That's one of the more difficult things that we have to manage. Right now your account is at what I'll call sort of a zero balance. I agreed with my consultants that they would send me separate vouchers. Once I have them I will call you and do a pay-as-we-go plan. Unfortunately, and with what Pat Hines is doing to fine tune the necessary engineering work, you'll have costs that -- you know, I apologize for the costs associated with this.

MR. HAMMOND: I understand that.

CHAIRMAN EWASUTYN: There's no other simple way of putting it.

Then Mike, do you want to give us conditions for conditional final approval?

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MR. DONNELLY: This subdivision received preliminary and phase 1 conditional final. This resolution is conditional final subdivision approval for phase 2.

We'll need sign-off letters from both Bryant Cocks and Pat Hines on the issues raised in their memorandums of September 28th and October 2nd. I'll include a condition that says each lot will require installation of a Cultech infiltration system before issuance of a certificate of occupancy. We will need, and I'll keep this as a checklist, the written approval of the Orange County Department of Health.

Do we need a DEC SPDES permit or just a notice of intent?

MR. HINES: Just a notice of intent needs to be filed. Yes.

MR. DONNELLY: I'll change that language.

I had a note, Pat, from the time of preliminary approval that a drainage easement across lot 7 running to the Town would be required. Is that something that's still shown on here?

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MR. HINES: That's been eliminated. That was the former dry swale practice that they were going to put in there. By redesigning it, it's been removed.

MR. DONNELLY: The final plan, I don't know if they do show the required number of street trees. Are they on there or leave that as a condition?

MR. LYTLE: We don't have a count.

MR. DONNELLY: The Town Board approved the road name?

MR. LYTLE: Yes.

MR. DONNELLY: We can take that one off.

There was a road length waiver resolution issued by the Town Board. If there are any conditions in that, they're incorporated into this resolution. Similarly, the variance that was granted by the Zoning Board of Appeals in 2005, any conditions in that are made a condition of this resolution. Clearing limits shall be marked in the field. Make sure that there is protective fencing before commencement of site work to make sure there's no disturbance. If the limits are

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violated, the developer/owner shall be required to provide additional replacement landscaping. There are more than ten lots in this subdivision total, so the ARB provisions of not look alike housing are triggered. We'll need a landscape security and inspection fee. I believe an inspection fee of this scale is \$2,000. A stormwater improvement security and inspection fee. A Town road security and inspection fee.

Do we need a stormwater control facility maintenance agreement for this project, Pat?

MR. HINES: No. All the practices are on the individual lots.

MR. DONNELLY: Okay. The offer of dedication for the roadway and parkland fees for these ten new lots at \$2,000 each is \$20,000.

CHAIRMAN EWASUTYN: Any questions, comments or additions? Jerry.

MR. CANFIELD: Just one question. On the condition that Mike had mentioned about the ARB being subject, the Board does have the ability to waive that should they choose. If not, then the applicant would be required to bring in

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renderings and house designs.

CHAIRMAN EWASUTYN: Don't we sometimes leave that up to the discretion of the building department?

MR. CANFIELD: That's correct.

MR. DONNELLY: The language of the resolution says the building department is empowered, at the time of the building permits, to refer any building permit application to the Planning Board if the specific proposal for that lot does not meet the requirements and the criteria of Section 185-59 E. So in the first instance you look at the copy cat provisions. If you're satisfied, you can issue the building permit.

MR. CANFIELD: It doesn't require a waiver?

MR. DONNELLY: This is it. This is the language. We empower you in advance so it doesn't have to come back here.

CHAIRMAN EWASUTYN: Any additional comments or questions?

(No response.)

CHAIRMAN EWASUTYN: Then I'll move for

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a motion to grant conditional final approval for the Hammond Subdivision subject to the conditions presented by our Planning Board Attorney, Mike Donnelly.

MR. BROWNE: So moved.

MR. MENNERICH: Second.

CHAIRMAN EWASUTYN: I have a motion by Cliff Browne, a second by Ken Mennerich. Any discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

Thank you, Mr. Hammond.

(Time noted: 7:21 p.m.)

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

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

DATED: October 25, 2012

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

----- X
In the Matter of

SPRINT/NEXTEL - QUAKER STREET (2012-16)

SPRINT/NEXTEL - NORTH PLANK ROAD (2012-17)

Discussion for Final Approval or Referral to the
10/18/12 Meeting under Board Business

----- X

BOARD BUSINESS

Date: October 4, 2012
Time: 7:21 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: JOHN P. EWASUTYN, Chairman
FRANK S. GALLI
CLIFFORD C. BROWNE
KENNETH MENNERICH
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. BROWNE: Under Board Business the first item we have is Sprint/Nextel - Quaker Street, project 2012-17. The project will either be discussed for approval of the final site plan and special use permit or be referred as Board Business for October 18, 2012 if the letter from Orange County Planning Department is received.

CHAIRMAN EWASUTYN: Bryant, Would you take lead on both the first and second item?

MR. COCKS: Absolutely. We did receive the copies of the reviews from the Orange County Planning Department dated September 26, 2012. Both granted Local determinations with their only comment being that the equipment and any devices installed match the color of either the existing water tank or cell tower just for consistency of the viewshed. The applicant has provided both of those and it meets the intent.

CHAIRMAN EWASUTYN: Okay. Then I'll move for a motion that will cover the first two items on the Board Business discussion, and that would be the Nextel - Quaker Street application, 2012-16, located on Quaker, and the North Plank Road Nextel/Sprint application, 2012-17, to grant

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final site plan approval subject to conditions that were in the original resolution prepared by Mike Donnelly.

MR. FOGARTY: So moved.

MR. GALLI: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

I learned a lesson from that at that last meeting. When the applicant said can I be on this one, meaning the 4th or the 20th, my knee-jerk reaction at the time would have been we'll wait until the 20th when the thirty-day time is up. Listening to what someone said, why not. It turned out to make all the sense in the

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SPRINT/NEXTEL

world. A good lesson to learn.

MR. HINES: Jerry has their building permit he said.

MR. CANFIELD: They submitted it already.

CHAIRMAN EWASUTYN: I'm surprised they're not asking for a C of O.

MR. CANFIELD: I haven't issued it yet.

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

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

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

DATED: October 24, 2012

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

----- X
In the Matter of

DISCUSSION ON LOCAL LAW TO PROVIDE FOR
ADULT-ORIENTED BUSINESSES

Discussion by Michael Donnelly and Bryant Cocks

----- X

BOARD BUSINESS

Date: October 4, 2012
Time: 7:24 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

MICHELLE L. CONERO
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MR. BROWNE: The last item under Board Business is Bryant Cocks and Mike Donnelly will hold a discussion on a local law to provide for regulation of adult-oriented businesses.

MR. DONNELLY: You've probably all seen the law. I can outline it quickly. It contains a great deal of findings. The findings are necessary to justify the potential infringement of the Freedom of Speech rights of the entertainers involved. There are also a number of definitions. Without going through the particulars of each of those, the intent or the overall scheme of the law is to prohibit adult entertainment, or adult-oriented businesses as it is defined, from any of the residential zones in the village but to allow them in the B, IB or I zoning district subject to two setback requirements. One is that they not be located within 1,000 feet of the property line of any sensitive site or the boundary lines of the RR, AR, R-1, R-2 or R-3 zoning districts. And provided further that they not be within 500 feet of any other adult-oriented business. Massage

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parlors, or whatever the precise definitional term was, are prohibited everywhere within the Town.

As to any existing uses that do not comply with the commercial zone location or the 1,000 foot or the 500 foot setback, they are required to phase out within two years following the effective date of the law. There's a requirement they be given a notice of termination and that the procedure needs to be complied with. In the event that an adult-oriented business wishes to apply to extend that time period, there's a procedure that requires an application to the Zoning Board of Appeals that could extend if the Zoning Board granted what amounts to a variance, a relief from the provision, and could extend the use for a period of up to five years but no more than that.

This is a text change to the ordinance that's been referred to you by the Town Board. The Town Board is required to have you render a report on five -- four separate criteria.

The first is whether the change in this local law is consistent with the aims and

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principles embodied in the zoning chapter as to the particular districts concerned. I'll go through each and then we'll come back to this. Which areas and establishments in the Town will be directly affected by such change and in what way they will be affected. Third, the indirect implications of such change and its affects on other regulations. And lastly, whether such amendment is consistent with the aims of the master plan.

We've discussed this before, but the Town Board is not really asking for your advice in terms of the legislative appropriateness of the law but rather any comments you want to make under each of those particular criteria that I've just outlined.

MR. GALLI: Mike, I just have a question for clarification. So in other words, if a -- one of these establishments, I'll use the one being built now, they don't fit into that realm of IB, B, I --

MR. DONNELLY: And the 1,000 foot.

MR. GALLI: So in two years they have to be closed?

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MR. DONNELLY: Yes. Cease operation.

MR. GALLI: Okay. And that's -- I mean I'm not going to ask you if it's legal or not.

MR. DONNELLY: Well the law supports it. I mean generally -- the general principle of New York law is whenever a zoning law is passed, it applies uniformly to all uses in existence. It is an if so fact of revocation of any building permit that is outstanding for any use that's no longer permitted, and by the book every use that exists has to stop tomorrow. New York actually allows that power. The problem with that broader power is under some circumstances it may constitute a taking of property if the person has substantial investment and can't recoup it. So often municipalities, at the time they make changes to uses or texts of the code that might affect properties, will, in some circumstances, grandfather them, either those that have already received final approval, those that are already in operation, sometimes those that received preliminary approval. That's the legislative prerogative of the Town Board. When a town decides that it wishes the operation to cease and

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not grandfather it for all time, the law requires that they amortize out that use, that the amortization period be reasonable and allow a recoupment of some or all of the investment that that property owner made. The intent is to make sure, or to try to ensure against, a claim that the application of that change code provision to that person constitutes a taking of their property. Here the Town did that on two levels. First a two-year amortization period, then an additional three-year amortization period on a showing of certain hardships that are articulated. Whether that would pass muster is a question for the courts. The procedural device that's outlined is certainly one that has in other contexts and in other factual situations passed muster by the courts in the past.

MR. GALLI: So both of them that we have in the Town are --

MR. DONNELLY: I don't know where they're located and whether they're ones that need to be amortized.

MR. GALLI: The one on 17K Jerry, does that fall into this category?

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MR. CANFIELD: I haven't actually measured it. I believe it may. There's actually three.

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MR. GALLI: Where is the other one?

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MR. CANFIELD: The bookstore.

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MR. GALLI: The bookstore counts, too?

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They said massage parlors. If they're massage

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therapists or whatever they call those things,

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those too? Like the one on Meadow Avenue. I mean

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you see them advertised in the paper. All of

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them, too?

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MR. CANFIELD: That also.

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MR. GALLI: Most of them are in

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residential zones.

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MR. COCKS: It says unless it's duly

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licensed. I guess if you have a massage therapist

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that has a license from New York State, then

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you're allowed to stay open.

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MR. GALLI: Okay.

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CHAIRMAN EWASUTYN: Bryant, do you have

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anything to add to this?

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MR. COCKS: Yeah. There were just a

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couple things. The separation, lot, bulk and

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parking requirements, they did put a maximum

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square footage of 10,000 square feet. During the public hearings they were saying how big the new facility was going to be. They added that in. They also added you can't have any apartments on top of it. So no residential uses in a mixed use. And also no more than one business per lot. So that also would have taken away them having the bookstore in the front and the club in the back. So both of those things also affected them.

This is how they cleaned up New York City, what Mike was talking about with the laws, the separation distances, and they gave them a one or two-year period to say you guys have to move, you're not allowed to be within 500 feet of each other and you're not allowed to be within 500 feet of sensitive sites. That's how they cleaned up Times Square at the end of the '80s. That's where the case law came from.

I actually did a twenty-page term paper on it in college. That's how I know about it.

MR. BROWNE: What's considered a sensitive area?

MR. DONNELLY: How is a sensitive area defined?

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MR. COCKS: They have a list. Schools, churches, cemeteries, day cares, public parks and recreation facilities, too.

CHAIRMAN EWASUTYN: Jerry, do you have anything you would like to add?

MR. CANFIELD: Nothing.

CHAIRMAN EWASUTYN: Additional comments from the Board?

MR. GALLI: I was at the Board meeting on Monday night and I know they declined to extend the moratorium. It got defeated three to two. So they're not extending it.

MR. FOGARTY: Do we have to respond to this?

MR. DONNELLY: Bryant, are you going to do the report? The first criteria is whether such change is consistent with the aims and principles embodied in the zoning chapter as to the particular districts concerned. It seems to me the zoning chapter never commented upon adult-oriented uses, so in that sense it's new, but by the same token it's not typically a use that would have been come contemplated under residential. In the sense it's prohibiting it in

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residential, I suppose it seems consistent with the overall intent. I don't know if that makes any sense.

MR. MENNERICH: Circular logic.

CHAIRMAN EWASUTYN: Mike, would you work with Bryant?

MR. DONNELLY: Sure. Next is which areas and establishments in the Town will be directly affected by such change and in what way they will be affected. It appears that there are three establishments that might be, and I guess the affect on them is that they will need to phase out in either two or five years.

MR. MENNERICH: Mike, on that, if all of them are in the situation where they'll have to phase out, are there still places in the Town where that type of business could develop?

MR. DONNELLY: Sure. In the commercial zones, provided it's not within 1,000 feet of a residential or sensitive area. So yeah. Actually, I think they point out 41 -- 38 percent of the gross acreage of the Town are areas within which adult-oriented uses can be built. So nearly a third to a half of the Town.

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MR. GALLI: Marketplace is IB, isn't it?

MR. HINES: It is.

MR. DONNELLY: The third one is the indirect implication of such change and its affect on other regulations. I don't know exactly what that means. Any ideas you have on that --

MR. GALLI: We'll leave that one up to you, Mike.

MR. DONNELLY: I'm leave it to Bryant.

CHAIRMAN EWASUTYN: You're honest anyway.

MR. DONNELLY: Lastly, whether such amendment is consistent with the aims of the master plan. Again, that seems a little bit like the first one relating to the zoning chapter. In the general sense that the community is divided into residential and nonresidential zones, this doesn't seem to fit the general idea of a residential zone use and it's more appropriate to allow it only in commercial zones.

CHAIRMAN EWASUTYN: Okay.

MR. DONNELLY: Unless there's anything else you want to add, Bryant and I will work that

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out as a report/letter and send it out on your behalf.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion that we close the Planning Board work session for the 4th of October.

MR. GALLI: So moved.

MR. FOGARTY: Second.

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

MR. GALLI: Aye.

MR. BROWNE: Aye.

MR. MENNERICH: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

(Time noted: 7:35 p.m.)

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

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DATED: October 25, 2012