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

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In the Matter of

PATTON RIDGE SUBDIVISION
(2012-18)

Patton Road at South Plank Road
Section 47; Block 1; Lot 44
R-2 Zone

----- X

CONTINUATION OF PUBLIC HEARING
SEVENTEEN-LOT SUBDIVISION

Date: November 7, 2013
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.
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. PROFACI: Good evening, ladies and gentlemen. Welcome to the Town of Newburgh Planning Board meeting of November 7, 2013. At this time I'll ask for a roll call vote starting with Frank Galli.

MR. GALLI: Present.

MR. MENNERICH: Present.

CHAIRMAN EWASUTYN: Present.

MR. PROFACI: Here.

MR. FOGARTY: Present.

MR. WARD: Here.

MR. PROFACI: The Planning Board employs various consultants to advise the Board on matters of importance, including the State Environmental Quality Review Act, otherwise known as SEQRA, issues. I ask them to introduce themselves at this time.

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,

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Hauser & Edsall Consulting Engineers.

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

MR. WARD: Please stand to say the Pledge.

(Pledge of Allegiance.)

MR. WARD: Please turn off your phones or on vibrate. Thank you.

MR. PROFACI: The first item on tonight's agenda is the continuation of a public hearing. It is the Patton Ridge Subdivision, 2012-18, both sides of Patton Road at South Plank, Section 47, Block 1, Lot 44. It's located in the R-2 Zone. It's a seventeen-lot subdivision represented by Kirk Rother.

Before we start I'll ask Michael Donnelly, the Planning Board Attorney, to explain the purpose of a public hearing.

MR. DONNELLY: We have two public hearings on this evening's agenda. The Planning Board, in certain types of applications, before they take action on the project holds a public hearing. The purpose of the public hearing is for you, the members of the public, to bring to

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the attention of the Planning Board issues or concerns that the Planning Board may not itself have realized or that have not been brought to them by their consultant team. After Mr. Rother gives his presentation, the Planning Board will ask those who wish to speak to each of those public hearing matters, to raise your hand. We would ask you to step forward, give us your name, spell it if you would for our Stenographer so we get it down correctly. It would be helpful if you told us where you live in relation to the project. We ask you to address your comments to the Board. If you have questions that can easily be answered, the Chairman will ask either the applicant's representative or one of the members of the Town's consultant team to answer those questions.

MR. PROFACI: Thank you, Mike.

I'll ask Ken Mennerich to read the notice of hearing.

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a

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public hearing pursuant to Section 276 of the Town Law on the application of Patton Ridge Subdivision, project 2012-18, for a sixteen-lot subdivision on premises located on Patton Road in the Town of Newburgh, designated on Town tax map as section 47, block 1, lot 44.0. The applicant proposes a sixteen-lot subdivision on a 9.38 acre parcel on Patton Road near Route 52 intersection, located in the R-2 Zoning District. The north side of Patton Road will have a cul-de-sac with nine lots and the south side of Patton Road will have seven lots and an associated drainage pond. Said hearing will be held on the 7th day of November 2013 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."

CHAIRMAN EWASUTYN: Kirk, if you'd give your presentation, please.

MR. ROTHER: Sure. Since this is a continuation because of an error in the mailings, do you want to see if there's anybody new here

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tonight?

CHAIRMAN EWASUTYN: You can start it that way.

UNIDENTIFIED SPEAKER: I'm new.

MR. ROTHER: Then I'll go through it all one more time.

This is an application for a sixteen-lot subdivision of approximately 9 acres of land situated on both the north and south side of Patton Road, also with frontage on Route 52. Here is an aerial photograph of the site currently. Route 52, Patton Road on both sides, currently vacant land.

As was read during the public hearing notice, there are two proposed cul-de-sacs, nine lots on the north side of Patton Road, seven lots on the south side of Patton Road.

Included in the improvements will be a drainage analysis, stormwater management pond. There's proposed improvements to the water line along Patton Road which will connect to New York State Route 52. Sewer will be accommodated by new sewer mains that will connect to an existing sewer manhole at the intersection of Patton Road

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and Route 52.

There's been a lot of discussion to date regarding traffic, particularly at the intersection of Patton and 52. Also with regards to drainage. In consideration of that we've designed a pretty robust drainage system above and beyond what was required.

The intersection of Patton and 52 is a tricky situation that we're hoping to improve in some way, shape or form. I don't know that that's going to resolve completely yet.

CHAIRMAN EWASUTYN: Is there anyone here this evening who has any questions or comments, would you raise your hand and give your name and address.

MR. D'AGOSTINO: My name is Michael D'Agostino, I live on 8 Royal Circle. As of now what I heard was -- are they closing Patton and 52 on that side? And they're putting a cul-de-sac there?

MR. ROTHER: No.

MR. D'AGOSTINO: So it's going to be straight through? How many houses are on that side? You said seven?

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MR. ROTHER: At the last public hearing there was a lot of discussion of a lot of options with the public, and I believe that's something that came up, was closing Patton Road. If that were to happen it would have nothing to do with this subdivision. It would be a Town --

MR. D'AGOSTINO: Then that would congest Royal Circle. As of now that's where everyone goes to go to Stewart's and leave the development from that side. Royal Circle is full of traffic as we are now with no extra houses. I live right on Royal. I literally work from my home office and I count the cars coming down. It's been getting heavier and heavier because every home in the development doesn't have one car like forty years ago. They have three, four cars, people coming in and out all day long. That's a main thoroughfare to come out of the development. So if Patton is closed on that side, that's going to congest everyone coming down Royal Circle and going to Stewart's. It's going to be great for Stewart's but not for us.

MR. HINES: Right now there is no intention to close Patton Road. It was just a

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suggestion from the audience at the last meeting.

MR. D'AGOSTINO: The audience suggested it or the developers?

MR. HINES: The audience suggested it. It's not currently on this set of plans.

MR. D'AGOSTINO: You get the approval, you do it and all of a sudden the Town decides they want to close it and what do we do?

CHAIRMAN EWASUTYN: Then you go to the Town and speak to the Town because the Town has the authority if they so choose. I would say the Town would have a public hearing on it prior to doing it. The Town has the authority to alter the travel route of Patton Road if they feel it requires that. It's not a Planning Board action, nor do we have the authority to act on that. There were four suggestions that were raised from the public, one was making Patton Road just a one-way in. What we did, our traffic consultant who isn't here this evening recorded those recommendations, they were forwarded on to Darrell Benedict, the town highway superintendent, and we did our due diligence as far as listening to the public, collecting their

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thoughts and passing them on to the next level, and that would be Darrell Benedict, the highway department. There was a concern about the dip in the road when you come down Patton Road and the vehicles bottoming out or school buses bottoming out. That was recorded, forwarded on. We basically did our due diligence.

MR. D'AGOSTINO: And for the record you know that's been like that for over forty years; right? Just for the record. At this point --

CHAIRMAN EWASUTYN: I'm not that old but I'll take your word.

MR. D'AGOSTINO: That's been like that for forty years.

CHAIRMAN EWASUTYN: I'm sure of that. Yeah. Thank you.

MR. D'AGOSTINO: My concern as a homeowner is how are we going to benefit from this? How does it benefit us as homeowners?

CHAIRMAN EWASUTYN: The gentleman here.

MR. TADRY: Ray Tadry. I live on Elmhurst Avenue directly opposite Patton. If they don't close Patton Road, you would improve that in some manner or form. What does that

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mean?

MR. ROTHER: We've considered a lot of things, and I've walked this several times myself. I'm glad I'm here today after walking on 52 several times myself. One of them was possibly looking into adding a turning lane into Patton Road. To do so we would have to possibly secure land from the adjoining landowner right here on the corner, which on this map is Magnanno. There were complications with that. It would make their lot more nonconforming, their house would be closer to the road. The DOT, I was told, would want a full width aisle, at least 75 feet long. It did not seem like a feasible option. We also looked into how wide the State right-of-way was on Route 52, particularly to the north, which I guess 52 would be 52 west. Sometimes the right-of-ways are unusually wide when the State does their taking. The surveyor told us in this particular instance it's fifty feet give or take. There was not a wider taking. The reason we asked that was perhaps we could clear and grade around this corner to increase the sight distance for vehicles traveling

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eastbound on 52 as they approached Patton Road. We will offer to clear as much as we can as far as vegetative growth that's within the right-of-way because our property comes to a point. We can't do much more beyond what's currently within the State right-of-way.

MR. TADRY: Do you have an intention of widening Patton Road?

MR. ROTHER: Excuse me?

MR. TADRY: Do you intend to widen Patton Road?

MR. ROTHER: We're going to be putting a water main down the shoulder of Patton Road, so Patton Road is going to be -- the stonewalls will be removed to some extent, the trees will be cleared. We don't have a proposal to actually increase the width of pavement but by virtue of all the work to be done on Patton Road with several crossings, it's going to be, you know, a wider, less shaded road than it currently is.

One suggestion that's been asked of us with the intersection is whether we could just make this corner of Patton Road a little bit wider, and that's certainly a possibility which

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would help at least vehicles turning in and out from Patton Road toward 52 east.

MR. TADRY: Has anyone expressed their concerns over the traffic and the amount of -- the increased stops by police for speeding and the number of fatalities that have occurred, one on the corner of Elmhurst and Patton and a little further down? With that many cars coming in -- you have seventeen homes planned?

MR. ROTHER: Sixteen.

MR. TADRY: What do you project the number of cars coming through there? If there are two cars per household, I don't think we can stand it over there.

CHAIRMAN EWASUTYN: Raymond, at the meeting last week your representative -- the Town was represented, the Planning Board is represented by a traffic consultant. Those issues were looked at and it was considered to be reasonable.

MR. TADRY: Okay. I never got a notice about last week.

CHAIRMAN EWASUTYN: I apologize. Again, we apologize. It was more my error in the

1 way I photocopied the materials that came back.
2 I inadvertently didn't photocopy a sheet that
3 should have been done. Creighton, Manning
4 Engineers who represents the Town, our traffic
5 consultant, did look at those issues.
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7 MR. TADRY: Okay.

8 CHAIRMAN EWASUTYN: This gentleman.

9 MR. BERRY: Al Berry, I live on 4
10 Capital Court. What would be the average lot
11 size of the sixteen-lot subdivision?

12 MR. ROTHER: They're roughly 15,000
13 square feet is the minimum lot size. They're
14 close to 16,000, some as much as 20,000, 22,000
15 square feet.

16 MR. BERRY: A little less than half an
17 acre.

18 MR. ROTHER: Between a third and a
19 half. The same zoning as the surrounding
20 neighborhood.

21 MR. BERRY: One further question. On
22 that sort of S curve cul-de-sac, just as you
23 enter there, what is that land between there and
24 the existing property? Is that owned by the
25 first homeowner or is that --

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MR. ROTHER: This little piece right here?

MR. BERRY: Yes.

MR. ROTHER: We currently have that shown as being part of the road, the right-of-way for the road.

MR. BERRY: Okay.

CHAIRMAN EWASUTYN: Ma'am.

MS. WILLIAMS I'm Patricia Williams, 18 Bridal Path. I have a question in regards to the drainage. You said it's going down to Route 52. Where does the water go from there?

MR. ROTHER: Right now there's a couple structures on Route 52. There's a culvert under Patton Road, there's a catch basin approximately in this area. There is a drainage easement and a pretty large drainage swale that runs behind these properties, down along these properties, and in this corner there's a 36 inch pipe that goes down toward Delaware Road and then crosses under Route 52. All of this stormwater runoff will go under Patton Road to a new culvert, into the stormwater management pond that's right there, discharge in this corner of our property

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into that 36 inch pipe.

MS. WILLIAMS: They just increased the size of the pipe from Brighton Court down Delaware Avenue. That goes under 52. Now where does that empty? Into the creek?

MR. ROTHER: Yes. I believe so.

MS. WILLIAMS: And what's the name of the creek?

MR. HINES: Bushfield Creek. Bushfield Creek.

MS. WILLIAMS: That comes from Orange Lake?

MR. HINES: Yes. It is the outlet for Orange Lake.

MS. WILLIAMS: Now, they have done that with Brighton Court, they have done that with Meadow Winds. We've lost our pond basically in Algonquin Park, which is a county park, due to the silt that comes down. We've lost Winona Lake because of the buildup. The earth and dam broke and nobody can afford to replace it, so now the pond has become a swamp area I would say.

There's also on that Bushkill -- that creek is landscapers that have piles of dirt and wooden --

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the chips that when there's a storm, all that gets flooded. The DEC isn't concerned about this?

MR. ROTHER: You're asking me?

MS. WILLIAMS: Mm'hm'. I mean has the DEC been asked about this?

MR. ROTHER: As far as our stormwater management, we have to abide by DEC guidelines. There's a drainage study that was prepared and submitted to the Town, and at the point of our analysis, which is where the stormwater leaves our site post-developed, we have to maintain the same levels or lower than pre-built.

MS. WILLIAMS: So there's hardly anything left to the ponds. I'm sure --

MR. HINES: This project is proposing a rather large stormwater detention pond to be constructed on the south or east side of Patton Road which is designed to maintain the hydrology of the area. The pond is designed to fill up during storm events and flow out over time so it doesn't exceed the existing runoff rates from the project in it's pre-developed form. We have reviewed a stormwater management plan that models

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those storms and gives us the level of discharge pre-development. This project is in compliance with the DEC regulations and the Town of Newburgh stormwater regulations which are more stringent than the DEC.

If you're looking, he just put up a color photo. The blue area is the size of the proposed pond on the site. That's not there today. It will be installed in order to control the runoff.

MS. WILLIAMS: All right.

CHAIRMAN EWASUTYN: The gentleman in the back who hasn't spoken yet.

MR. GALATI: I live in the Town, I also have a commercial property further down on 52.

CHAIRMAN EWASUTYN: For the record your name, please?

MR. GALATI: Greg Galati. I'm generally pro-development but I am concerned about the drainage. I'm certainly not an engineer but I don't know quite what all that means about retaining water.

I just want to comment, though, that I border the Bushkill Creek and I have had a

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relationship with that property for thirty years now. The creek has never been an issue. In the last twenty-four months the creek has come up higher than ever. Irene, Floyd, and then we had some flash floods this August. I'm sure you guys are aware of it. 52 was almost to the point where it should have been shutdown. The restaurant got flooded, the firehouse got flooded again, the car wash got flooded again. So something is going on. I know the environment is changing but something is dumping way too much water into that Bushfield Creek.

I'm here because I didn't know about it and I read the thing in The Sentinel, The Mid-Hudson Times about the last meeting where the gentleman said -- he answered the concerns about drainage, it's all going to 52, it's going to 52. Building a retention pond and when that overflows it's going to 52. In my opinion 52 can not take any more water diverted to it. The Bushkill Creek side can not take any more water. It's starting to back up and come over. The only way I see it is if you can run culverts or whatever all the way down to Winona Lake. I don't know who

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would find the money to do that. I'm very concerned about dumping any more water on 52. I don't know if you're aware of what happened in August but it was scary. I've never witnessed a flash flood until that point, and out of nowhere the water was coming down 52 like a river from, I guess the Thruway side. I don't know where it came from, if there was an incident or something. The water flowing from those properties was like a river, a muddy river coming down from the Thruway east, just behind all those properties to the south side, just pouring over 52. Thank goodness it stopped and it receded as quick as it happened. To have some -- in a period of twenty-two months, to have issues, incidents, events with the creek that hasn't happened in thirty years, something is going on. I don't know if it's silt or more things are being diverted on that side. It's at the breaking point. You guys may be aware of this but it is at the point where I don't see how more projects can be diverted into there. I just wanted to make sure, you know, you were aware what's going on just because I witnessed it.

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CHAIRMAN EWASUTYN: Pat, do you want to address that?

MR. HINES: This project is not diverting water into there. It's going to maintain the hydrology that's going there today. The intent of the stormwater management pond and the documentation that the applicant's engineer has prepared is that the runoff pre-development will be less post-development because the pond, for lack of a better term, acts as a bathtub, fills out and meters it out. It's been designed for various storm events with various size orifices that allows the stormwater from the site, the site hydrology to be maintained at that pre-development peak discharge rate. That's the intent of having that pond is so that they're not sending more peak flow there. The water is not being diverted. The water from this site is currently tributary to that area, and the stormwater management plan and the stormwater management design is to assure that post-development, that that same stormwater hydrology is maintained.

CHAIRMAN EWASUTYN: The gentleman in

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the back there.

MR. DUBALDI: Joe Dubaldi, 21 Patton.
My house borders that property.

Would you go over that easement again
one more time, the drainage easement, if you
don't mind? How it goes through from Patton down
through Neversink.

MR. ROTHER: You're right here?

MR. DUBALDI: Right. I'm right next to
the property.

MR. ROTHER: So from what I recollect,
there's a twenty-foot wide drainage easement that
runs along the rear of these lots, runs along the
rear of this property, all the way basically to
Route 52.

MR. DUBALDI: I was told at the last
meeting they're not touching that. Correct?

MR. ROTHER: Not touching this, this,
this. There's a 36 inch pipe right here we're
connecting to.

MR. DUBALDI: That's sufficient to
handle --

MR. ROTHER: Yes.

MR. DUBALDI: I know I've been there

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over thirty years and we have not had any problems.

MR. ROTHER: I've walked this and it's a pretty deep channel. It's a deep, wide channel that goes into that 36 inch pipe.

MR. DUBALDI: I was surprised it's a twenty-foot easement. When I first moved there on the property I was surprised.

CHAIRMAN EWASUTYN: Is there anyone else who hasn't spoken?

MR. D'AGOSTINO: I have a question --

CHAIRMAN EWASUTYN: Sir, sir. If you would stop to listen. I'm asking those --

MR. D'AGOSTINO: All right. I'll wait. My initial question was skipped over.

CHAIRMAN EWASUTYN: -- who haven't had an opportunity to speak, to speak first. That is the protocol of the meeting.

MR. D'AGOSTINO: Okay.

CHAIRMAN EWASUTYN: Again, is there anyone here this evening who hasn't had the opportunity to speak?

(No response.)

CHAIRMAN EWASUTYN: Is your name Mike?

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MR. D'AGOSTINO: Michael. Yes.

CHAIRMAN EWASUTYN: Okay.

MR. D'AGOSTINO: I apologize. I just got a letter recently. I didn't get any other letters for these meetings.

CHAIRMAN EWASUTYN: As I said earlier, I apologize.

MR. D'AGOSTINO: We need to be filled in if this is the first time we're here. Am I correct? I just want to make that on the record.

CHAIRMAN EWASUTYN: That's because I did not photocopy the mailing list correctly and I sent it out.

MR. D'AGOSTINO: I do that for a living. If you need help in the future, I can print that for you and do it for free.

CHAIRMAN EWASUTYN: I'm learning as I get older.

MR. D'AGOSTINO: I'd like to know -- my other question was -- may I speak?

CHAIRMAN EWASUTYN: You have the floor.

MR. D'AGOSTINO: My question was kind of flipped over into someone else's question. I'd like to know, where I live now, I've been

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2 there for seven years. I moved up from the city
3 to get away from clutter, to get away from
4 everything. I don't agree with more development
5 in the area but I want to know how as a homeowner
6 am I -- how are we all going to benefit from
7 this? How are we benefiting from you putting
8 these new houses here with more children, more
9 kids going to school, more traffic, more
10 congestion?

11 CHAIRMAN EWASUTYN: We'll have our
12 Attorney, Mike Donnelly, describe to you land use
13 matters.

14 MR. DONNELLY: I don't know that
15 whether you benefit is any part of the equation
16 here. The Town Board sets what zoning is
17 allowed. People that own property are allowed to
18 develop their property consistent with that
19 zoning. The Planning Board looks at whether or
20 not it complies, and this layout does. It has to
21 mitigate any environmental impacts. Largely the
22 drainage issues have been addressed. We're still
23 working on whether or not improvements can be
24 made to the intersection of Patton Road and Route
25 52. But no part of the equation is whether or

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not you benefit. That's just irrelevant.

MR. D'AGOSTINO: All right. And how about the drainage --

MR. DONNELLY: Some would say -- some would say that when development occurs, that property values increase. Some say it decreases. But from the Planning Board's point of view that's not part of the equation. It's not part of their jurisdiction to make that determination.

MR. D'AGOSTINO: If environmental is the issue, how about all the flooding problems behind Congressional Drive and Ambassador?

MR. DONNELLY: We're looking at this site.

MR. D'AGOSTINO: It's only a block away.

MR. DONNELLY: We don't have any jurisdiction over anything other than the site that's before us, and that's this site. It has a drainage plan. It's been reviewed by the Town's --

MR. D'AGOSTINO: You'll have to excuse me. I'm from the Bronx. I moved up here seven years ago. We kind of ask a lot of questions. I

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apologize if I want to just educate myself.

MR. DONNELLY: I think issues that were brought up tonight about whether there's material that's preventing the flow of the creek is something that should be brought to the attention of the Town Board so they can investigate that.

MR. D'AGOSTINO: I will definitely do that if that's the route I have to take. I appreciate you responding to that.

CHAIRMAN EWASUTYN: Hearing no further questions from the Board --

MR. BERRY: I just have one question for the developer. I'm Al Berry, 4 Capital Court.

Your drawing, your depiction that you have up there now, the dark green areas, what does that represent?

MR. ROTHER: It's intended to represent areas that would not be cleared. Since the last meeting, though, there was a comment that was brought up could we maintain more trees if possible. So this map is a month old. We have revised the clearing limit line, it shows on the erosion control plan, to further provide,

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particularly along these lots and along these lots, that even less trees gets cleared than are shown. The Planning Board hasn't seen that.

MR. BERRY: If this is all approved when would this start?

CHAIRMAN EWASUTYN: Al, I can't answer that. The applicant would have to answer it.

MR. ROTHER: Potentially in the spring.

MR. DONNELLY: The approval under consideration tonight is what's called preliminary subdivision approval. If that is granted, the applicant will then have to get approval of other agencies, DEC, the Health Department. After getting those approvals they have to return here for final approval, and only after final approval is received could the applicant then begin construction.

MR. BERRY: One further question. Are these going to be -- these two cul-de-sacs are going to be Town roads?

CHAIRMAN EWASUTYN: Yes.

MR. BERRY: Okay.

CHAIRMAN EWASUTYN: And there will be an area at the end, Al, where there will be snow

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storage.

MR. TADRY: Are minutes available from the last meeting?

CHAIRMAN EWASUTYN: Michelle, have they been posted yet?

MS. CONERO: They will be this week.

MR. TADRY: Where will they be available?

MS. CONERO: On the Town's website.

MR. HINES: Once they're completed and received we post them on the Town's website under minutes, agendas and meetings.

CHAIRMAN EWASUTYN: If there are no further questions from the Board, I'll turn to our consultants. Pat Hines?

MR. HINES: We have received a comment letter, and I know the applicant's representative has it, from Jim Osborne, the town engineer, regarding some requested changes and updates to the water and sewer on the site as well as some discussion regarding the proposed roadway layout and cross section which the applicants will have to address.

We've previously -- at the last public

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hearing there was a discussion regarding the parcel on the east, I guess it's the east side of the project, Patton Road, regarding drainage. I've had the opportunity to discuss that issue with the applicant's engineer, and rather than install piping along Patton Road east of the site, the grading is going to be modified in the area of the proposed road A, about 100 feet in, to allow that current ponded area to the rear of that residential property, to allow it to discharge to the proposed stormwater collection system to be conveyed to the stormwater management pond. Those plans will be updated.

We did receive a letter from the Orange Lake Fire District identifying that they had no issues responding to Route 52 and Patton Road. We had heard from folks that there was a fire department response issue. The fire department heard that and followed up with a letter stating they have no concerns of responding to this subdivision.

A City of Newburgh sewer acceptance flow letter is required as one of the outside agencies to be received prior to final approval.

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We received some correspondence from the Town Board requesting a note regarding the drainage district. The stormwater improvements on this site will become part of a drainage district which will fund the operation and maintenance of the stormwater improvements, including the proposed stormwater detention pond, so that the residents of the Town of Newburgh won't be the ones responsible for the operation and upkeep of that. The individual lots in the subdivision will be taxed for the operation and maintenance of the drainage improvements for long term so they are assured that the project continues to function as designed long term.

The project will require approval from the New York State Department of Environmental Conservation for the sewer extension, for the pipes collecting the sanitary sewer.

Orange County Health Department approval for the water main extension will be required.

As previously mentioned, the City of Newburgh flow acceptance letter for the sanitary sewer is an outstanding issue.

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CHAIRMAN EWASUTYN: Jerry Canfield,
Code Compliance?

MR. CANFIELD: We have nothing.

CHAIRMAN EWASUTYN: Board Members.
John Ward?

MR. WARD: Let's see. My only comment
is like where Patton Road and 52 is, if you can
expand it out and flare it out so it's safer to
make the turn for -- you know, when they're
making lefts and rights it would help the vision
no matter what you do on both sides. But that's
my only comment.

CHAIRMAN EWASUTYN: Tom Fogarty?

MR. FOGARTY: I have no comment.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: Nothing additional.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: I have no questions.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: All my concerns were
addressed.

CHAIRMAN EWASUTYN: Before I make a
motion to close the public hearing, are there any
further questions or comments from the public?

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(No response.)

CHAIRMAN EWASUTYN: At this time I would like to move for a motion to close the public hearing on the Patton Ridge sixteen-lot subdivision.

MR. GALLI: So moved.

MR. MENNERICH: Second.

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

(No verbal 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 yes. So carried.

At this time we'll turn to our Planning Board Attorney, Mike Donnelly, to give us conditions of approval for the preliminary approval.

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MR. DONNELLY: Let me first ask did we receive the Orange County Planning Department report letter?

CHAIRMAN EWASUTYN: Yes, we did.

MR. DONNELLY: Local?

CHAIRMAN EWASUTYN: Yes.

MR. DONNELLY: Okay. The resolution before us is for preliminary approval of the subdivision. The first condition will be a requirement that the comments in Pat Hines' and Jim Osborne's letter, and any future letters that they write between now and final, be incorporated into the final approval. In particular, Pat mentioned earlier a proposal to regrade a portion of Patton Road in the vicinity of the subdivision to correct a ponding problem, and that needs to be incorporated into the final plans. The approval is conditioned upon the delivery of written approval from the Orange County Department of Health and the DEC. That was for realty subdivision and water main extension from the Health Department and sewer main extension from the DEC. The Town will need to create a drainage district, and if they do not do that

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2 you'll have to come back with an alternative
3 proposal for how the drainage should be handled.
4 If we haven't received it already, the highway
5 superintendent will have to approve of the
6 roadway inner connections and driveway locations.
7 You'll need to show on the final plans street
8 trees on the new roadways. The Town Board is
9 going to have to approve the name of the roadway
10 as part of final approval. We'll need a flow
11 acceptance letter from the City of Newburgh, and
12 I believe you need an out-of-district sewer user
13 agreement with the Town as well. There are
14 conditions that will be incorporated into the
15 final resolution but we'll announce some of those
16 now. There will be foundation staking required
17 of certain of the foundations in the lot. There
18 are more than ten lots in this subdivision,
19 therefore the Architectural Review Board
20 provisions of Section 185-59 E apply here.

21 I don't think we need a landscape
22 security and inspection, or we do.

23 MR. HINES: We do for the street trees.

24 MR. DONNELLY: We'll need a landscape,
25 a stormwater, water main, sewer main and Town

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road security and inspection fee. I believe there is some offers of dedication in the area of Patton Road, that will also need to be signed off on as part of the final approval. And finally, at the time of final approval the fee in lieu of parkland provisions of the Code will apply here. That requires a payment of \$2,000 per lot at the time of map filing.

Depending upon your schedule, Kirk, there is a resolution in place that allows a partial deferral of some of that until building permits. You can see that resolution on the website or get it from the Town. If you want to avail yourself of that, there's certain requirements in terms of map notes and paperwork that has to be done. You may want to look into that. Please let us know ahead of time so we can incorporate that into the resolution.

Those are the conditions.

CHAIRMAN EWASUTYN: Any comments or questions based upon the conditions starting with our consultants?

MR. HINES: Nothing additional.

CHAIRMAN EWASUTYN: Board Members?

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MR. GALLI: No.

MR. FOGARTY: No.

CHAIRMAN EWASUTYN: Then I'll move for a motion to grant preliminary approval for the sixteen-lot subdivision of Patton Ridge subject to the conditions that were presented by the Planning Board Attorney, Mike Donnelly.

MR. PROFACI: So moved.

MR. FOGARTY: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you.

MR. ROTHER: Thank you very much.

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CHAIRMAN EWASUTYN: Raymond, I'd say within the next couple of days the minutes will be posted.

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

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

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

DATED: November 27, 2013

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

----- X
In the Matter of

RIVERA CLEARING & GRADING
(2011-29)

Countryman Lane off Pressler Road
Section 6; Block 1; Lot 2.14
AR Zone

----- X

PUBLIC HEARING
CLEARING & GRADING PERMIT

Date: November 7, 2013
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.
PATRICK HINES
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: STEVEN ESPOSITO

----- X

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

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MR. PROFACI: The next item on tonight's agenda is the Rivera Clearing and Grading, project 2011-29, located at Countryman Lane off Pressler, Section 6, Block 1, Lot 2.14 in an AR zone. It is a clearing and grading permit public hearing. I'll ask Ken Mennerich to read the notice of hearing.

MR. MENNERICH: "Notice of hearing, Town of Newburgh Planning Board. Please take notice that the Planning Board of the Town of Newburgh, Orange County, New York will hold a public hearing pursuant to Section 276 of the Town Law and Chapter 83 of the Town of Newburgh Code on the application of Rivera Clearing and Grading, project 2011-29. The applicant proposes to clear and grade 3.45 plus or minus acres on a 56.9 plus or minus acre parcel of property for driveway access and a residential structure. The property is located in the AR Zoning District on the western terminus of Countryman Lane off Pressler Road, known as the -- known on the Town's tax map as Section 6, Block 1, Lot 2.14 and Lot 1.21. Said hearing will be held on the 7th day of November 2013 at the Town Hall Meeting

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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 21, 2013."

CHAIRMAN EWASUTYN: Mr. Esposito.

MR. ESPOSITO: Steve Esposito, Esposito & Associates, representing Mr. and Mrs. Rivera who are the owners of the subject parcel.

The subject parcel is located on the easterly side of Pressler Road within the Town of Newburgh. There's actually two parcels. The 56.9 acre parcel is the main part of this, and there's also a small piece of the Rivera's home, that's 1 acre and that's on Countryman Lane. The site is accessed via Countryman Lane.

Existing on the site is Gidneytown Creek. The gray areas here are two existing regulated wetlands which have been delineated and certified by the New York State Department of Environmental Conservation. The site is zoned AR or agricultural residential.

What we're here tonight for is to

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obtain a clearing and grading permit in accordance with Section 83 of the Town Law.

The Riveras purchased this land and they would like to prepare the site for a future residence in the back woods. This is a blow-up area of where -- the area delineated in green here is the 3.45 acres that will be cleared and graded.

Some of the work that's also included in this application is the installation of a culvert pipe over the creek. There's also a couple of other drainage structures as part of the upgrading of the existing wood road or Countryman Lane.

This project had been before this Board I believe back in December 2011. At that time they received a clearing and grading permit. A condition of that permit was to go out and get the other required approvals. A couple of the approvals that were required is a wetlands disturbance. Again, this road -- the existing road is within the wetland buffer. Those lands are regulated by the DEC. Mr. Rivera was required to get a permit to disturb those areas

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2 to upgrade the road, which he did, and that was
3 issued by the Department back in 2012. Also part
4 and parcel of that application was the
5 requirement to get a water quality certification
6 by the Department to make sure that they were in
7 compliance with the State code regulating
8 discharge into the streams. That water quality
9 certification was also received and they are good
10 until December 2016.

11 The area is essentially wooded for the
12 most part. Mr. Rivera has been upgrading the
13 road under the original permit. He also started
14 to do some clearing back here where hopefully
15 he'll be locating a house sometime in the future.
16 That's not part of this application. We're here
17 just talking about the ability to clear and grade
18 those areas in preparation of the residence.

19 Back in July, I believe, of 2013 he
20 received what's called a stop work order by the
21 building department because unfortunately the
22 previous clearing and grading permit that was
23 issued by the Town had expired. It was good for
24 one year. So Mr. Rivera contacted our office.
25 What we did is updated the drawings to show

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2 what's been done to date. Also during that time
3 Mr. Doug Bogler from the DEC came out and
4 performed an inspection of the site. I spoke to
5 Doug after his inspection. There was a couple
6 things that he was concerned about. I
7 memorialized those in a letter which was provided
8 to the Board. We assured him that once the
9 grading and clearing permit was issued again by
10 the Town, that Mr. Rivera can go in and tidy up a
11 couple of those areas that they were concerned
12 about.

13 We are here tonight to hear any
14 comments that the public may have and hopefully
15 address them. If not, then we'll at least get it
16 down in writing and get back to you.

17 CHAIRMAN EWASUTYN: Like the earlier
18 public hearing, if you'd raise your hand and give
19 your name and your address.

20 MR. COUNTRYMAN: Merlin Countryman on
21 16 Countryman Lane. I've been in heavy highway
22 construction and union construction for over 48
23 years. What he has done on Countryman Lane as
24 far as undercutting it and rebuilding on
25 Countryman Lane, he went far beyond the means of

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undercutting two, three foot of crushed rock. No contractor would have done that if they didn't have to do it.

I just got my school taxes which jumped up \$300 in one year. I'd like to see more housing or houses or something to help pay the tax roll. Thank you.

CHAIRMAN EWASUTYN: Mr. Esposito, do you want to respond to that?

MR. ESPOSITO: If I could, Mr. Countryman actually talked about the road coming in from Pressler to the site. There's some existing residences on there. It's a private road, probably built I'm guessing --

MR. COUNTRYMAN: I'd say in '70. Subdivided.

MR. ESPOSITO: Subdivided. What Mr. Rivera had done during the time of the original clearing and grading permit is he actually upgraded that whole section of road and put in some chop rock and graded it and put in item and made a road that wasn't really passable, passable to the point I guess Mr. Rivera said one of the residents couldn't get oil delivery in the

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wintertime because the road was in such disrepair. Now there's no problem to get the oil truck down there to get the deliveries. He's done that as part of the process of upgrading the wood road or Countryman Lane to get back to his future house site.

MR. CROCI: Daniel Croci, 15 Countryman Lane. This project should be together with Countryman Lane. I don't know why it's separate. It's one road continuing up to Pressler Road.

I moved eight years ago and I have a lot of issues with the road, like getting in, the police or the ambulance. He fixed all the road now. I think the project should go together up to Pressler. The road is private, it's not in the Town. We only have access to it. We can not control anything on the road. There are subdivisions on the road. I don't think it was well managed when it was approved. I spoke to the Town many times. I'm much happier now that he maintains the road and he fixed it, but I think the Town, it wasn't managed well. For many years nobody helped us. Only he fixed it now, two years ago. I spoke to the Town many times

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and nobody cared. There are kids and there are old people there living. I think this project should be tied with Countryman Lane. It's the same road, you know. I'm bringing that issue here because I know you can only speak about this project. I think it should be tied together with the other road, which it's the same lane, you know. Thank you.

CHAIRMAN EWASUTYN: I think what you're asking is what authority and how can we use that authority to see that a private road like Countryman Lane is maintained and improved.

I'll turn to Mike Donnelly, the Planning Board Attorney, to explain that.

MR. DONNELLY: Two things. One is private roads are just that, they're private. They may not be maintained by the Town, they may only be maintained by those who use it. It's preferable if there's some kind of agreement for cost sharing. If there isn't here, if this is the opportunity for you to get together and do that, we'd recommend it but we can not require it.

MR. CROCI: I'm sorry. I'm not a

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lawyer. If it's a private road, it's not my road, it has an owner. The owner should keep -- if the owner can not keep the road he should give it to the Town or do something. If I have a car, it's my car. I have to keep my car. I can not share, you know, the expenses of my car to all the people.

MR. DONNELLY: I will tell you that if we approved a private road today we would mandate that everyone that used it share in the cost. I would say 95 percent of the Town roads -- private roads in the Town have cost sharing agreements in place. The cost of it, even though it may not be owned by anyone, although most people own some part of it, but even if it's owned by a separate person --

MR. HINES: This predates that.

MR. DONNELLY: -- if there's an opportunity, because of this proposal, to get together and craft a cost sharing agreement, I'd recommend it but we can't require it.

MR. CROCI: Is there any way we can turn this road into a Town road?

MR. DONNELLY: You'd have to talk to

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the Town Board.

MR. CROCI: What?

MR. DONNELLY: You'd have to go
petition the Town Board to do that.

MR. CROCI: If there's a Town Board.

MR. DONNELLY: This is not the Town
Board.

CHAIRMAN EWASUTYN: Let's see if
someone else has a question.

MR. COUNTRYMAN: My brother had to
subdivide. Everybody on the deed had access to
the road but nobody opposed it. It's up to
everybody to maintain their portion of the road.

MR. GALLI: That was before --

CHAIRMAN EWASUTYN: This road dates
back to when, Pat?

MR. HINES: The `70s. Currently the
Town regulations require if a private road is
proposed in a subdivision, that everyone own a
portion of that private road. And then, as the
attorney just said, an access and maintenance
agreement with cost sharing would be imposed on
those owners. But there are still some roads in
the Town of Newburgh that are private roads owned

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by one or more of the entities but not all of them. That's the issue you're facing.

CHAIRMAN EWASUTYN: Can you give an overview as to if someone wanted to have the Town accept this as a Town road, what would be the improvements necessary?

MR. HINES: In order for the roadway to become a Town road it would have to be reconstructed to meet current Town road specifications. It did just recently occur in the Town that a rather large private road, similar issues that you were facing in the past, the maintenance issues with the road. The Town was able to create an improvement district for those that benefited by it which became a taxing district, and they were able to use the Town's ability to bond -- municipal bond the improvements over I believe a twenty-year period where now the people that benefit from that road are in that roadway improvement district and pay a tax over time to pay for that road. Once the road is constructed the Town will accept dedication of the road and it will become a Town roadway. This one is a little difficult because

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it wasn't ever constructed with the benefit of a turnaround or cul-de-sac so there would be additional property required. It would be quite a hurdle to get this road up to Town specifications.

MR. COUNTRYMAN: Mr. Doce is the one that subdivided it. That's all I'll tell you.

CHAIRMAN EWASUTYN: Any additional questions or comments, please? The lady in the back.

MS. REVELLE: Toni Revelle, I live on Pressler Road. We border -- the back of our property borders this property. Can you tell me, I can't tell on the map, how much of this property has already been graded according to the plan?

MR. HINES: 3.45 acres.

MS. REVELLE: How much has already been graded?

MR. HINES: 3.45 acres.

MS. REVELLE: Now I'm confused. I thought the request was to grade.

MR. HINES: It is. This is a -- this project had a clearing and grading permit which

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expired, but it also went beyond the original approval. So it's here to both get it reissued and to, after the fact, approve the additional acreage.

MS. REVELLE: That's my question, though. What additional acreage?

MR. HINES: It's approximately 2 additional acres.

MS. REVELLE: All right.

MR. HINES: No more is proposed to be cleared than is cleared today, but the original clearing and grading permit I think only had one and-a-half acres plus or minus. They went over by --

MS. REVELLE: So they went over.

MR. HINES: -- 1.75.

MS. REVELLE: We're not talking about an additional --

MR. HINES: It's not an additional 2. It's post-approving what occurred on the site, getting it back into the shape that it is. The code enforcement officer was notified of the expansion of the disturbed areas and that's why they're back here today. Their permit expired

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and they exceeded the limits of their previous permit. I believe the DEC is also working with them on some issues regarding this also.

MS. REVELLE: Well that's the major concern, because of what the last year has been like. Thank you.

CHAIRMAN EWASUTYN: This gentleman.

MR. HAMOND: I'm Eugene Hamond of 85 Pressler. Can somebody lay out what issues the DEC brought up?

MR. ESPOSITO: Yes. Upon their -- Mr. Bogler's inspection, I gave him a call. It's in a letter to the Town and the consultants have it. Basically they want to make sure -- at that time the Town had issued a stop work order. He was concerned that the exposed soil be seeded and stabilized, which Mr. Rivera did immediately. We also provided pictures to the Town and to the DEC to show that that was done.

There's also a rock -- a stockpile of some boulders that appear to be close to or in the adjacent area of the wetlands. We said that we would move those once the grading and clearing permit was issued. There's also a stockpile of

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some stumps that were taken out in the cleared area that may be in or adjacent to the wetland, and we would remove those as well and dispose of those in the upland area.

CHAIRMAN EWASUTYN: Additional comments?

MR. REVELLE: Ron Revelle, 163 Pressler, adjacent to this property. I want to make sure I'm absolutely clear. This is what we listen to for three years (playing recording). This is from my deck. I just want to be sure that I understand that the grading is done because it's like living next to a rock mine. It's incredibly loud. I know there have been complaints filed, not just by me. The police have been called because of the sounds. It's just -- you wouldn't want this next to your property, trust me. It is outrageous. You can't use the back of your -- we put a deck on the back porch to enjoy the environment. You want to talk about environmental impact. This noise is an environmental impact. It's so loud that it has to be a problem in terms of health issues. It's scraping steel against rock. You hear -- I've

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seen machines coming out of there that are conveyor machines that are dropping, I assume, rocks into trucks or whatever. I don't know what. It is over the top big time. I'm just asking you please put an end to it. A guy building a house, hey, more power to you. I'll come out and give you a hand with something. This stuff, this has got to stop. This is outrageous. Please do something about it.

CHAIRMAN EWASUTYN: Have you completed grading on the site?

MR. ESPOSITO: The grading in and around the area of the house is pretty much done. There's going to be some fine grading. There's stockpiles there that need to get straightened out, spread, seeded. There is a pile -- it's a very bony site, a lot of boulders. You dig a hole in the ground and you produce a bucket full of boulders. There's one stockpile, like I said, that was in the adjacent area that needs to get relocated, have it picked up in a truck and relocated. There's another stockpile up in the back here that also has to either get crushed, buried or used in the walls.

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One of the things that I do want to talk about specifically is I did mention there is going to be installation of a rather large corrugated steel culvert pipe going over the existing creek. It's a culvert. Then there will be fill to get up to the culvert, and that fill -- fill will have to be brought in and then the existing boulders that are there will be used as side walls or wing walls to shore that up. So a lot of them will be reused. In terms of grading and filling, the majority of work that's left is really just addressing that culvert.

CHAIRMAN EWASUTYN: Jerry Canfield, Code Compliance. This would be more within your realm.

MR. CANFIELD: Just one comment I'd like to make. Mr. Esposito did an accurate description of what's happened at the property up to this point. Should the Board choose to grant this approval, perhaps a condition would be in order. Typically our boilerplate language covers that they will adhere to all of the regulations pertaining to the clearing and grading. It should also take into consideration the noise and

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2 illumination ordinance. We have received some
3 complaints with respect to this particular
4 project, working out of the hours, Sundays,
5 beyond the hours of actual compliance with that
6 ordinance and regulation. So as you heard
7 tonight, some of the neighbors have complained
8 about that, and legitimately and rightfully so.
9 So again, my suggestion would be, should the
10 Board choose to approve this, perhaps a condition
11 to --

12 CHAIRMAN EWASUTYN: Do you want to make
13 a recommendation for the Board, otherwise we'll
14 be sort of reaching for straws?

15 MR. CANFIELD: Sure, sure.

16 CHAIRMAN EWASUTYN: You and Pat Hines
17 have much greater field experience than we do.

18 MR. CANFIELD: My recommendation would
19 be to just make a condition of approval strict
20 adherence with the noise and illumination
21 ordinance. When the Board does that it gives the
22 code compliance department a little bit more
23 assistance in enforcing these codes. So that
24 would be our recommendation.

25 CHAIRMAN EWASUTYN: And that would also

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cover the hours of operation?

MR. CANFIELD: Yes, that's correct.

MR. HINES: They're specifically called out in that noise ordinance.

MR. GALLI: I just have a question. Would that be not on Sunday?

MR. HINES: Correct.

MR. GALLI: Half day on Saturday and during the week certain hours?

MR. CANFIELD: That's correct.

MR. GALLI: If they don't comply you can shut the job down again like you did before?

MR. CANFIELD: Yes. Also, for the Revelles, our department is the one that is responsible for enforcing the noise ordinance. Any hour of the day, call the Town of Newburgh Police Department, they can dispatch one of our people. We have a decibel meter that we will go out and stand at the property line and measure how much noise is being emitted from the site. So that's your avenue of recourse. It is our department's responsibility to enforce that.

MR. FOGARTY: John, I just want an explanation.

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If your original clearing and grading was for 1. something acres, how did 3.75 acres get cleared?

MR. ESPOSITO: The numbers are a little off. Honestly, I just think that you have Mr. Rivera doing the work himself, he's not a site contractor. It was more of a family affair where he and his family worked on weekends and didn't have an appreciation for the specifics of your resolution of approval or the areas delineated on the map. Mr. Canfield's department went out there, they issued a stop work order specifically citing the need for obtaining a current grading and clearing permit reflective of what's been done or what's going to be done.

MR. FOGARTY: The way I interpret it -- I understand what you're saying. I interpret it that we approved a certain clearing and grading and then the owner decided to do whatever he wanted to do. That's what rubs me the wrong way with this whole thing. Now we have to do extra steps to make sure that if we do pass this clearing and grading, that it follows the rules and regulations. Well it's already been proven

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that they're not going to be followed, someone is going to have to be watching this thing all the time to make sure that the regulations are followed. That bothers me.

MR. ESPOSITO: If I could, let me just address that a little bit. One of the things that -- I'm going to start down the list. Let's start with the DEC. They have certain authority on this site. Probably with them it's really the environmental issues, the creek, potential impacts to the surface water resource, soil and erosion control. Part of the documents that were prepared was a SWPPP, stormwater pollution prevention plan, that was reviewed by your engineers. There was the -- that's been filed with the State. He has to comply with that. I assured the representative of the DEC that we or somebody from Hudson Design would be out there doing inspections, you know, prior to him starting, and then during construction to make sure he's in compliance with the SWPPP. One of the things that we also did, after talking with Jerry when we first started this up again or made our application, was we made an application to

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2 his department for the construction of the
3 culvert. What that does is that puts that whole
4 activity under his purview. There's a schedule
5 of inspections. Mr. Rivera will have to call the
6 building department out to inspect excavation,
7 footings. So there's always -- there's going to
8 be an extra set of eyes there now because of that
9 building application.

10 MR. FOGARTY: Is that going to be done
11 privately? Is he going to do this culvert
12 himself or are there professionals doing it?

13 MR. ESPOSITO: I'm going out there
14 tomorrow with a site contractor that I've worked
15 with for over twenty years to take a look at that
16 particular job.

17 MR. FOGARTY: As you can tell, I'm
18 uncomfortable.

19 MR. ESPOSITO: Honestly, I understand
20 that and I appreciate that. Mr. Rivera and I
21 have discussed it. We've reviewed the conditions
22 of your previous approval. The hours of
23 operation, specifically condition number 2-A,
24 talks about the hours of operation, the days that
25 he can actually work out there. He's got to

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understand -- he thoroughly understands now the need to comply with that and everything else that's been filed as part of this application previously and currently.

CHAIRMAN EWASUTYN: Frank Galli?

MR. GALLI: I just had one question on the -- it sounded like they were pounding a lot of rock there. Is the actual pounding of the rock to remove it? Is that part of it done on the 3 acres now? I mean are they still going to be in there pounding away, trying to blast rock and stuff with the excavator or is that part of it done?

MR. ESPOSITO: There's going to be movement of boulders.

MR. GALLI: I said pounding.

MR. ESPOSITO: The real noise is the rock crusher. That's what he uses, the shock rock for stabilization of Countryman Lane and also the subbase for the extension of the wood road.

MR. GALLI: Which you said was done.

MR. ESPOSITO: Correct.

MR. GALLI: I'm saying is there going

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to be more?

MR. ESPOSITO: Let me clarify that.

The subbase and shock rock we still have to do the rock for culvert.

MR. GALLI: Filling. You're filling, you're not taking it out. You shouldn't have to be pounding away.

MR. ESPOSITO: Correct.

MR. GALLI: There shouldn't be pounding away constantly, day in and day out.

MR. ESPOSITO: No.

MR. MENNERICH: What is your timeframe for finishing that culvert work?

MR. ESPOSITO: Right now we -- you know, we had actually hoped -- because it's been so dry we were hoping to get it in this fall but I suggested that we wait until spring. We're in the middle of November and the weather could change at any time. It will probably be springtime. We'll wait for the creek to go down. In terms of working there, it will be a lot easier. Some things we would do this fall are, you know, I promised Doug we'd get the stumps out of there and get the rocks out of the wetland

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area. Those will be done now. Anything that needs to be stabilized, to get it before winter, we can do that now.

CHAIRMAN EWASUTYN: Based upon seasonal conditions when you start in the spring, it will take about how many weeks to complete the task?

MR. ESPOSITO: I would say for the balance of the clean up in the back, you're probably looking at 21 days, 30 days. The culvert, you're probably looking about the same time.

CHAIRMAN EWASUTYN: Additional comments from Board Members?

MR. PROFACI: Are you Mr. Rivera?

MR. RIVERA: Yes, I am.

MR. PROFACI: Are you willing to strictly adhere to the conditions that we've been talking about to continue this project?

MR. RIVERA: I may have acted in ignorance but I started this project with the DEC, with engineers. It's a family project. We have 58 acres. I didn't realize we took more than that. If you look at the Google map, we beautified the place. We've taken the same rock

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2 there and we fixed the road as we promised.
3 We've done everything. I have people who live
4 close to me. They are the closest neighbors.
5 Ask them how they think about the noise. I don't
6 know these other neighbors. These people are
7 right next to me. They're here tonight on my
8 road, Countryman Lane. I've done everything in
9 good faith. If I went out of bounds, okay. I
10 hired now another man. This is all by engineers.
11 This is all by Nowicki. They delineated, the DEC
12 came, I got my permits. I didn't try to skate
13 anything. It's a family project, my daughter, my
14 son. We have machines. It's what we've done.

15 MR. PROFACI: I didn't ask you if you
16 tried to skate anything.

17 MR. RIVERA: What I'm saying to you
18 is --

19 MR. PROFACI: I didn't mean to imply
20 that at all. I only asked are you willing to now
21 comply --

22 MR. RIVERA: Absolutely. Absolutely.

23 MR. PROFACI: -- with the conditions?

24 MR. RIVERA: Those are the hours. I
25 have no problem with that.

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MR. PROFACI: That's all I wanted to know.

CHAIRMAN EWASUTYN: John Ward?

MR. WARD: I have one problem, the noise and everything else of you working, doing it on Sunday. I'm in construction down in New York City. We can not do certain things. We have regulations for everything. The Town of Newburgh residents have requirements. I'm sorry, you should know them before you even start.

MR. RIVERA: Okay.

MR. WARD: I'm just letting you know.

MR. WILSON: I'm Ed Wilson, 27 Countryman Lane. I've been there like 29 years. The road was a disaster.

I'm also going to say something. I've witnessed some of the people putting in complaints coming down that road, blaming Mr. Rivera. Mr. Rivera was not even there those days. It was someone else down the road. You can hear it because we're in the valley, doing construction. They go out. I thought it was him. Then when I went to Mr. Rivera, they had kids get hurt back there on the four wheelers. I

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2 told Mr. Rivera this. Mr. Rivera blocked off the
3 driveway. Their parents came down there with the
4 ambulance to get the kids out of the woods. I've
5 seen Mr. Rivera tell the people that complain,
6 different friends of mine that come down there
7 and complain, and he says I'll take you back
8 there, we can go for a ride. He always offers to
9 see what's going on, what he's doing. He's
10 putting a ton of gravel and uses that busted up
11 rock. Not only does he put it in the road but
12 he's putting in everybody's driveways where they
13 need it because we always got washed out. When
14 George Bucci owned it, he'd come down, I can't do
15 nothing. Turn around, same thing. Wayne Booth
16 now, he came down. He helped try to plow us out
17 two years ago, because all the plows were stuck,
18 with his personal truck. He got stuck and we had
19 to pull him out. So I mean yet people set off
20 fireworks constant, they can have the boom boxes
21 going, loud cars and stuff. Then you see the
22 four wheelers, ATVs, but nothing is said. I've
23 seen Mr. Rivera tell people and walk away, no
24 problem. Packs up the machines and walks away.
25 Comes back. But he's done a hell of a job, and I

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know -- we even get police down there. We never had police come down the road. Now you see patrol cars come down for what he's done. Our porch -- I have a huge porch. We have a lot of friends over, everything. It don't bother him. He's in the valley so it echoes a little. But you also get the other people doing construction. He's getting blamed for that too. I don't want to say the neighbors. They even witness it and they are the ones complaining and they go oh yeah, it's not him. There's the machine parked. He's been there certain times.

CHAIRMAN EWASUTYN: Any further questions or comments?

MR. THOMPSON: Mr. Thompson, 26 Countryman Lane. I am the closest to the property that's being addressed right now. The noise level is nothing more than the normal level of normal construction being taken part of. He has taken excellent care of that road and I'm very thankful for all the work he's done.

CHAIRMAN EWASUTYN: Thank you.

Sir.

MR. REVELLE: Mr. Rivera did things for

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people. Any of you that he hasn't done something nice for on the road?

UNIDENTIFIED SPEAKER: Can you ask again? I couldn't hear you.

MR. REVELLE: Everybody said nice things about him taking care of the road. You said the noise didn't bother you. Is there anything Mr. --

MR. COUNTRYMAN: The noise doesn't bother them?

MR. REVELLE: I want to show you a couple of things here. I don't know when this Town Board or Town Planning Committee approved a pond. Was that part of the original proposal?

MR. ESPOSITO: No. The pond was not part of the original proposal.

MR. REVELLE: There's one sitting there right now.

MR. ESPOSITO: Which is reflected in the as-built -- I should say the existing plans before the Board and before the building inspector's office. I had to make sure they got surveyed. We have the -- basically this plan shows the existing conditions as it is today.

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It's a .2 acre pond. The 3.45 acres of cleared area. That's all as-built and all documented on the plans before the Board.

CHAIRMAN EWASUTYN: Pat, do you have anything to add to that?

MR. HINES: That was one of our earlier comments was to show the grading and the pond was shown on the plans. It's kind of a kidney shaped landscaped looking pond. It has asphalt around it.

CHAIRMAN EWASUTYN: Pat, do you want to give us a summary of tonight's hearing before we close?

MR. HINES: They've addressed our previous comments on the plans pertaining to the engineering details.

One of the things that Jerry and I were mentioning when we were listening was the original scope of the project being an acre-and-a-half and a residential project, it seems to have grown larger than that. We didn't get inspection fees previously but that may be something we want to have now. It will allow my office to assist Jerry's office in monitoring the

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stormwater management issues and the soil erosion and sediment control plans on the site.

CHAIRMAN EWASUTYN: Do you want to make a recommendation?

MR. HINES: \$2,000 is the minimum fee, which should be adequate based on the timeframes that Mr. Esposito identified.

CHAIRMAN EWASUTYN: Okay.

MR. DONNELLY: How much should the performance guarantee be?

MR. HINES: \$3,500 an acre times 3.45.

MR. DONNELLY: Okay.

MR. HINES: That's all I have outstanding.

CHAIRMAN EWASUTYN: Any further questions or comments?

Eugene is it?

MR. HAMOND: Yes. We put up -- we're actually just into the Town of Plattekill which is -- the road splits. In fact, I have people on the both sides of us. The Town of Newburgh but we're in a little -- but when we first moved in there were probably like ten or fifteen houses along the road and now there's thirty-five, forty

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2 houses. It was a very rural place and I know
3 it's very attractive, but I would like the Town
4 of Newburgh and the Town of Ulster Planning Board
5 to be much more conscious of people overbuilding
6 in this area, especially if they are doing it
7 improperly, without permits, against DEC
8 regulations, et cetera, et cetera. Just have
9 their eye on it and don't wait for a year after
10 the permit, especially when there's been
11 complaints and complaints and complaints. Come
12 in and start monitoring earlier.

13 CHAIRMAN EWASUTYN: Thank you. Any
14 further questions or comments?

15 MR. CROCI: This road is a part of the
16 Countryman Road or it's going to be separate?

17 CHAIRMAN EWASUTYN: Mr. Esposito?

18 MR. ESPOSITO: Well there's two tax
19 parcels. There's the 56.9 acre piece that's in
20 the back where it will be the future location for
21 Mr. Rivera's residence on 56 acres. Then there's
22 Countryman Lane that you have right now that's on
23 another tax parcel, it's a little over an acre.
24 As far as ownership, it's continuous. It's just
25 set up on two tax parcels. Mr. Rivera, as you

1 know, started on Pressler and made his
2 improvements down to the creek and stopped at the
3 creek, and then hopped over the wetlands and made
4 the improvements up to where he now has the pond.
5 He owns all of it so it's under one ownership and
6 he's making one complete improvement on that.

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8 MR. CROCI: So it's one road?

9 MR. ESPOSITO: One road.

10 MR. CROCI: Because the engineer, I'm
11 sorry, he said in order to comply with certain
12 rules, the Town rules, it would have to be a
13 circle around the corner. Now if it's just one
14 road it might not need to be.

15 MR. HINES: I believe that the private
16 road ends at the 56 acre or 59 acre parcel,
17 whatever it is, and then becomes a driveway at
18 the terminus. I'm not sure what your deed says
19 but I believe the private road terminates where
20 the culvert is going. Beyond that it's going to
21 be on one person's driveway.

22 MR. ESPOSITO: Typically they're set up
23 now -- this arrangement will be different today
24 than it was a couple of decades ago. I believe
25 you have rights of access but you don't own it in

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fee or a portion of it.

CHAIRMAN EWASUTYN: Okay. At this point I'm going to move for a motion to close the public hearing on the clearing and grading permit for Rivera.

MR. MENNERICH: So moved.

MR. PROFACI: Second.

CHAIRMAN EWASUTYN: I have a motion by Ken Mennerich. 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. So carried.

I'll have Mike Donnelly give us the conditions for the clearing and grading permit.

MR. DONNELLY: The resolution is for a reissued and modified clearing and grading

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2 permit. The first condition is like the last
3 time, that the applicant should comply with the
4 requirements of 83-10 which include hours of
5 operation, activities subject to the old code
6 provisions, a permit authorizing Town officers to
7 enter onto the site for inspections. We'll add a
8 new condition on Jerry's recommendation that the
9 applicant shall be required to fully comply with
10 the Town's noise and illumination regulations at
11 all times. There will be the required
12 performance security. If I did my arithmetic
13 correctly, you have \$12,250 and an inspection
14 escrow of \$2,000. All development must comply
15 with Chapter 109, the flood plain development
16 provisions. I don't know if the permit was
17 issued. That was in the last resolution as well.
18 I assume it probably was. That's it.

19 CHAIRMAN EWASUTYN: Any additions?
20 Pat, Jerry?

21 MR. HINES: No.

22 CHAIRMAN EWASUTYN: I'll move for a
23 motion to grant that approval subject to the
24 resolution presented by the Planning Board
25 Attorney, Mike Donnelly.

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MR. PROFACI: So moved.

MR. MENNERICH: Second.

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

MR. GALLI: Just for the benefit of the public; Jerry, what are the hours that they can actually work so the public knows?

MR. CANFIELD: I believe it's 6 until 7.

MR. DONNELLY: It's in the resolution.

MR. CANFIELD: Chapter 125.

MR. DONNELLY: The ones from 83 are 7:30 a.m. to 6:00 p.m. weekdays.

MR. GALLI: 7:30 a.m. to 6:00 p.m. weekdays, Monday through Friday. And that's it?

MR. DONNELLY: No work on Sundays or public holidays. I don't know about Saturday.

MR. ESPOSITO: There's no differentiation between a weekday and Saturday.

MR. GALLI: So Saturday is included and Sunday is not.

MR. ESPOSITO: Sundays and holidays.

CHAIRMAN EWASUTYN: We had a motion by

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Joe Profaci. We had a second by Ken Mennerich.
We had discussion by Frank Galli. Any further
discussion?

(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: No.

MR. WARD: No.

CHAIRMAN EWASUTYN: Aye. The motion is
carried.

MR. ESPOSITO: Thank you.

(Time noted: 8:17 p.m.)

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

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

DATED: November 27, 2013

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

----- X
In the Matter of

AVATAR SPORTS BAR
(2013-22)

102 Old South Plank Road
Section 64; Block 4; Lot 22
B Zone

----- X

INITIAL APPEARANCE
SITE PLAN

Date: November 7, 2013
Time: 8:18 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.
PATRICK HINES
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: BRENDAN CONNOR

----- X

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

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MR. PROFACI: The next item on tonight's agenda is the Avatar Sports Bar, project 2013-22, located at 102 Old South Plank Road, Section 64; Block 4; Lot 22. It's located in the B Zone. It's a site plan and an initial appearance being represented by Al Fusco.

MR. HINES: That's not Al Fusco.

MR. CONNOR: I have been accused before. My name is Brendan Connor

CHAIRMAN EWASUTYN: Please.

MR. CONNOR: Good evening, everybody. My name is Brendan Connor from Fusco Engineering representing the Sarrows. This application is for a proposed sports bar at an existing vacant commercial space. The property is a .8 acre parcel. There's an existing small strip mall, if you will, on the property with four commercial tenant spaces in the front. One in the rear which I believe appears to be vacant at this time and then the subject area, the building, which we are proposing.

The frontage for the property is along Old South Plank Road and it's near the intersection of Old South Plank Road and Route

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52. This portion right here.

There's an existing thirty-car parking lot in the rear of the property which currently that area doesn't appear to be utilized for the existing retail spaces in the front. Those spaces in the front right now, there's a hair salon, an insurance office, a nail salon and a Chinese restaurant. Those spaces are more or less served by this front parking area here.

The intent of the proposed sports bar -- we also did prepare a preliminary architectural floor plan, very preliminary, which I think everybody has. There was some question about that. Basically primarily the use is to be a sports bar. The owner also would like to be able to have the potential to have events in the space as well. Perhaps have a karaoke or dance party DJ on occasion. The primary use would be a sports bar. There would be more or less seating throughout the entire area, not so much the center of it, that being reserved for a dance floor. So we're not really proposing any significant site improvements.

The existing thirty-car parking, thirty

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parking spaces in the rear, serve the needs of this proposed space. There is existing lighting out there which we need to provide a little bit more information on. There are existing site features which we need to include in our map. This is a preliminary survey to appear before the Board and more or less present the project. It is in the B Zoning District so the use is subject to Planning Board approval.

CHAIRMAN EWASUTYN: Okay. Brendan, I think we'll start with two points of concern. One is would this be a change of use, and the other which Jerry Canfield discussed with you is the formula for occupancy.

MR. CONNOR: Mm'hm'.

CHAIRMAN EWASUTYN: And then of course one other point, and I'm sure there are several others, is the entire building will now have to be brought up to code so it will need to be sprinklered. Jerry Canfield, code compliance, will walk you through some of the fine points you have to begin reviewing.

MR. CANFIELD: Well, first this project is unclear for us a little bit. We've looked at

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your calculations as far as how you derived the occupant load. Typically occupant load and building code issues are post Planning Board approval. In this case it's kind of an issue at this point because the parking that's allocated is reflective of the occupant load. The parking calculations in the Municipal Code allow the Planning Board to designate what the parking is based on the occupant load. So in short, I'm not sure I agree with how you derived that ninety-eight occupant load. I think the tables that you were using were very relaxed but the building as it's proposed and the floor plan lends itself to an occupant load of upwards of two hundred using 5 or 7 square foot per occupant as opposed to 15. The 15 that you used facilitates seating. You don't have a lot of seating there. The 5 or 7 square foot per person is more accurate for standing. That's what the floor plan that you submitted leads us to believe. So that's the biggest issue.

As you had said, it is a change of use. That's what brings you to this Board. The change of use now requires a site plan, so that's what

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gets you here. But also by bringing you here with the site plan, you lose existing nonconformity protection. There is a nonconforming eight-foot side yard setback that is nonconforming.

MR. HINES: Both side yards.

MR. CANFIELD: That would be both of them as well. This Board would be compelled to refer you to the Zoning Board for a variance. But like I said, with the occupant load, that's going to open up several other issues that really at this point are noncompliant. Perhaps you can elaborate a little bit more on what the occupancy is going to be.

MR. CONNOR: I believe where we derived the ninety-eight person occupant, that was on that preliminary architectural plan. It's not really referenced on our site plan. That was just kind of presented because it was just as a preliminary basis to show the space, to show the bathroom areas and everything that's included. I don't think it was an accurate depiction of what the applicant wants to do with the space as far as the dance floor in the center. I'm not sure

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if -- I believe when we did the parking calculation on the site plan we had more or less stated a hundred person maximum with the intent that there probably would have to be some limitations set to the occupant load of the building. You know, of the proposed space. So we would have to set some kind of occupant load and the seating -- with seating more appropriately shown on that architectural plan. I think that would change the formula. I'm not sure exactly what we have on that plan right there. I know there would have to be some limitations on the occupant load, and we could revise that accordingly.

MR. CANFIELD: Like I said, before the Board can I think make a decision, that needs to be clarified because occupant load is paramount.

MR. DONNELLY: We also need to know the nature of the uses and the existing and to be continued stores upfront because many of those may well extend into the evening hours and therefore also factor into the parking calculations.

MR. CONNOR: Okay.

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MR. CANFIELD: Do you want me to finish, John?

CHAIRMAN EWASUTYN: Do I want to continue? You had made a suggestion during the work session, and I guess there are two parts that I'm thinking. One, are we at a point or is Brendan ready to represent his applicant to move it on to the ZBA, because that's a requirement. The second thing I want to move on, do you want to have an appointment with Brendan or other representative of Fusco to come into your office to begin clearly defining the use and the occupancy? This I don't think is the proper time.

MR. CANFIELD: Perhaps that would be a more appropriate approach. At this point we'll look at this as perhaps a conceptual plan.

MR. CONNOR: That was our intent.

CHAIRMAN EWASUTYN: Do you want to move forward with -- I'll have Mike Donnelly explain to you what the procedure is in going to the ZBA.

MR. DONNELLY: The Newburgh code has a somewhat unusual provision and that is on a change of use like this, if there's any

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noncompliance with bulk, unless you are decreasing the degree of nonconformance, meaning you must do more than just keep it the way it is, you would need to get a variance. So we can refer you to the Zoning Board for -- what did you say, a front and a side yard?

MR. HINES: One side and both sides.

MR. DONNELLY: One side and two side yards. We can do that now or we can do it at a later point. You would have to apply as well.

One other requirement that we mentioned briefly but I think you need to give it some long thought to is if the building, and it does, needs to be sprinklered, you may need to rethink where you're going with this project. That would mean the entire building.

MR. HINES: Brendan, the Town of Newburgh has it's own sprinkler ordinance which is more stringent than the New York State Building Code requirements.

CHAIRMAN EWASUTYN: Brendan, how would you like to proceed at this time?

MR. CONNOR: Well, the intent of the meeting for us was to kind of appear before the

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Board on a preliminary basis with this plan and address some of these topics. I think the code compliance meeting is probably critical at this point for us to determine, you know, appropriate use for the space, which also would have impact on all these other items. If we were to be referred to the ZBA we could still have that meeting first and make whatever decisions the applicant wants to make before we move forward actually.

CHAIRMAN EWASUTYN: Mike, that would be fine?

MR. DONNELLY: Yes. Sure.

MR. CANFIELD: I think that's a good approach. With my experience of the Zoning Board, I think they are going to require a look. I can't speak for the Zoning Board, it's a separate entity, but they're going to need an additional level of detail before they can make a decision.

MR. CONNOR: Okay.

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

MR. GALLI: I think that's the proper

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AVATAR SPORTS BAR

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way to do it.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Looking at the floor plan, it doesn't appear that you're having -- would have any kitchen or food?

MR. CONNOR: No. The food would be catered. There would be no cooking in the space.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No questions.

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

MR. WARD: No questions.

CHAIRMAN EWASUTYN: Okay. I'll move for a motion to refer this to the Zoning Board of Appeals for both side yard deficiencies.

Do you want to set a date and time now or leave it up to the discretion of Jerry Canfield to arrange for a meeting?

MR. CONNOR: Okay.

CHAIRMAN EWASUTYN: I'll move for a motion that we leave it up to the discretion of Jerry Canfield to arrange to meet with Brendan or representatives of Fusco Engineering to speak about the occupancy load of the proposed Avatar

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AVATAR SPORTS BAR

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Sports Bar.

MR. GALLI: So moved.

MR. WARD: Second.

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

(No response.)

CHAIRMAN EWASUTYN: I'll move for a roll call vote.

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So carried.

Thank you, Brendan.

MR. CONNOR: Thank you very much.

(Time noted: 8:30 p.m.)

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

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

DATED: November 27, 2013

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

----- X
In the Matter of

MORONEY TWO-FAMILY RESIDENCE
(2013-21)

386 Lakeside Road
Section 28; Block 1; Lot 18.21
R-1 Zone

----- X

SITE PLAN

Date: November 7, 2013
Time: 8:30 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.
PATRICK HINES
GERALD CANFIELD

APPLICANT'S REPRESENTATIVE: DAVID TODER

----- X

MICHELLE L. CONERO
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MR. PROFACI: The next item on tonight's agenda is Moroney two-family residence, project 2013-21, located at 386 Lakeside Road, Section 28; Block 1; Lot 18.21, located in an R-1 Zone. It's a site plan represented by David Toder.

MR. TODER: Good evening. Since the initial meeting last time a number of changes were made to the site plan and some of the other documentation as well.

I met with the Town of Newburgh highway superintendent at the site, confirmed that the proposed private driveway directing to the two-family residence is permissible with the addition of a hidden drive sign south to notify people that the driveway was there.

In discussions with Pat Hines he confirmed that the existing sewer pump station design for the original subdivision is still suitable because it remains a four-bedroom design.

In terms of the driveway, it's confirmed that -- specified that it's a gravel driveway which would address any stormwater

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concerns that were raised.

The four parking spaces in front of the building have been reduced to two spaces.

In addition, some rendered elevations have been submitted. The colors are in the brown family. Brown and tan. I have samples. So in terms of the windows, it's beige, a tan sample. Silverline windows. I can hand this in. A wood colored front door entry. Then we have some other samples here. The roofing is going to be in the brown family.

Was it the lighter brown or the darker brown?

MR. MORONEY: The darker.

MR. TODER: So then that's the color of the asphalt shingle roofing. The siding was a tan.

Is this the one?

MR. MORONEY: Yes. Close.

MR. TODER: The siding is tan. Fairly similar to the elevation drawings. Up in the gables, they'll be a vinyl shake pattern, also in the tan family. So that's the color samples.

Additionally, I sent an e-mail to and

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spoke with the town engineer, Jim Osborne, and he is moving forward with contacting the City of Newburgh engineer with regard to approving the sewage flow for this property. So that will move forward in a timely fashion I believe.

MR. HINES: That would have been done at subdivision. So I think you're fine with that.

MR. TODER: Okay. It will be confirmed then to make sure that we're -- everything is copacetic. I don't know if there are any questions or --

CHAIRMAN EWASUTYN: I think at one point in time you'll pull out the -- which you may have, I'm not sure, the ARB form that we have and then you could list the information that you just provided us with. Okay. Rather than give us individual samples now, if you can make that one complete submission.

MR. TODER: The architectural review form, it is part of the initial submission.

CHAIRMAN EWASUTYN: Did you list all that on the form?

MR. TODER: I did, yes. Not specific

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names of but tan and brown. That's on the back side of the initial application submission.

CHAIRMAN EWASUTYN: Okay. Pat Hines, Jerry Canfield, do you want to talk about the deck?

MR. CANFIELD: The decks we talked about during the work session. There are decks on both sides of the house. In the project narrative you or the designer or someone seems to be taking credit for the exemption that permits certain decks and patios to be exempt from side yard setbacks. This is not the case with these decks on the second story. 185-18 C is a section of the Municipal Code that deals with these exceptions. The only patios and decks that are exempt from side yard setbacks are less than one foot in height. The fact that these are up on the second story does not exempt them. We talked about a solution. A possible solution could be just pull the building back ten feet to stay within the building envelop and then it will comply. If there's a physical reason that you can't do that, you have well over a hundred feet buffer from the wetland. So unless there's some

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other site restriction that doesn't allow the building to come back, then the only other alternative would be a zoning variance.

MR. TODER: Which we're not --

MR. CANFIELD: The easiest would be just to pull the building back.

MR. TODER: I reviewed that --

MR. MORONEY: Weren't we meeting the guidelines with the decks?

MR. TODER: I was pretty sure I reviewed that code. I spoke with someone at the building department and I didn't see that there was a height of deck associated --

MR. CANFIELD: There is. That exemption is pretty clear. It's less than one foot is the language that's used.

MR. HINES: We've been through it.

MR. TODER: It's more of a patio really.

MR. HINES: It exempts patios.

MR. CANFIELD: Patios and decks less than one foot off the ground.

MR. TODER: Okay. A question then. Frequently roof overhangs are also permitted to

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overhang side yard setbacks.

MR. CANFIELD: Overhangs are in that section of the code also. It's ten percent of the required setback.

MR. TODER: That's what these are.

MR. CANFIELD: These are decks. These are not roof overhangs. I would make the determination that what you have illustrated are decks.

MR. HINES: I don't see a problem with the plan sliding this thing back so it fits. If it's ten or fifteen feet further back I think you'll be okay.

MR. TODER: That's what we'll do then.

MR. CANFIELD: That would be the easiest solution I would think.

MR. TODER: That's what we'd like then. Sure.

CHAIRMAN EWASUTYN: Pat, questions or comments?

MR. HINES: We did receive, as they mentioned, a note from the highway superintendent stating that the driveway is approvable at that location with a hidden drive sign. I did a

1 little research back on Secure Property
2 Management's original approval and it was based
3 on the public hearing comments I believe from
4 some representatives of the Orange Lake Civic
5 Association as well as some members of the
6 Planning Board that the original subdivision got
7 a three -- recommended to go to the Town Board
8 for a waiver for three driveways on a common
9 drive rather than the private road. That
10 approval was granted by the Town Board in May of
11 2012 I believe. It was more on the
12 recommendation of the applicant. The applicant
13 heard the comments at the public hearing and took
14 it upon themselves to go through that. There
15 wasn't any requirement of that other than some
16 input from the Planning Board and the Orange Lake
17 Civic Association. In reviewing that I believe
18 that the Board could, if it wanted to, amend
19 those approvals to allow the modification to the
20 subdivision and this site plan for access. There
21 was quite a bit of input at the public hearing
22 for this subdivision from some neighbors and the
23 Orange Lake Civic Association, so it would be up
24 to the Board if they felt that a public hearing
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would be required.

We did confirm the design of the original sewer pump station. This connects to the Orange Lake force main system. It was four bedrooms and this project continues to be four bedrooms so that continues to be valid.

The parking has been revised per our comments.

That's all the comments we have.

CHAIRMAN EWASUTYN: Mike, do you want to discuss the modification?

MR. DONNELLY: Well it's within your -- when we were here last we suggested that perhaps the reason was the sight distance issue. While I said you had the authority to change that, I thought you should be certain that you understood the basis of why you did it in the past. Pat has produced the minutes of the Town Board meeting and the letter from the applicant's engineer at the time that suggested that it was driven more by the Planning Board than by the applicant at the time based upon the sight distance constraints. There is some discussion from Jim Osborne that seems to suggest that lack of

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ability to connect another driveway was a rationale why the Town would allow three on the private drive. So it's a mix and match thing. Obviously you had the jurisdiction to change it. You do have the letter from the highway superintendent where he says he thinks it's adequate with a warning sign.

The question is do you want to take action on it or do you want to hold a public hearing so the members of the public have a chance to participate.

CHAIRMAN EWASUTYN: As with all site plans, it's discretionary from the Planning Board as to whether they want to have a public hearing. I'll poll the Board Members.

Frank Galli?

MR. GALLI: No.

CHAIRMAN EWASUTYN: Ken Mennerich?

MR. MENNERICH: Yes.

CHAIRMAN EWASUTYN: Joe Profaci?

MR. PROFACI: No.

MR. FOGARTY: No.

MR. WARD: No.

CHAIRMAN EWASUTYN: Okay. And I say

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no.

Let the motion show that the Planning Board waived the public hearing.

We have two actions before us then this evening. Actually, it was my suggestion, and correct me, that a letter be made to Jim Osborne for a City flow acceptance letter. So obviously I was mistaken in that since it originally was approved for.

MR. HINES: We would have done that at subdivision.

CHAIRMAN EWASUTYN: And it's still four bedrooms. That's not necessary. That would be the one deciding factor that wouldn't allow us to take action tonight. We then can take action tonight?

MR. HINES: Yes.

CHAIRMAN EWASUTYN: So the action would be?

MR. DONNELLY: Does this need to go to the County? Where is it in relation to trigger -- is it within five hundred feet of any trigger?

MR. HINES: No.

CHAIRMAN EWASUTYN: I think 52 is.

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MR. HINES: That's a ways away.

MR. DONNELLY: You need to issue a declaration of significance.

CHAIRMAN EWASUTYN: So we have to make a SEQRA determination?

MR. DONNELLY: Correct.

MR. HINES: We would recommend a negative declaration.

MR. DONNELLY: How big is the building?

MR. HINES: It's residential, it's not commercial. It's a duplex.

CHAIRMAN EWASUTYN: 2,500 square feet.

MR. DONNELLY: It might be a Type 2.

MR. HINES: I thought that's commercial, less than 4,000.

MR. DONNELLY: You're right.

CHAIRMAN EWASUTYN: So we still make the SEQRA determination?

MR. HINES: Yes.

CHAIRMAN EWASUTYN: Having heard from our consultant, Pat Hines, at this point I'll move for a motion to declare a negative declaration on the Moroney two-family residence.

MR. WARD: So moved.

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MR. MENNERICH: Second.

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

(No response.)

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

MR. GALLI: Aye.

MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: And myself. So carried.

Michael, we'll need conditions for the site plan approval and we'll also need conditions for ARB.

MR. DONNELLY: It would carry your standard ARB condition, which means you can't build anything that isn't shown on the approved plans without coming back to the Board. From what we discussed this evening, other than the standard condition regarding outdoor fixtures and amenities, it simply says you may not build any

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structures other than what's shown on the plans, including mechanical units, dumpsters, et cetera on the site. I don't believe there's any other site plan condition required.

MR. GALLI: John, I just have a question. Jerry will review the plans when they --

MR. HINES: We'll have to have a revised plan moving the building back.

MR. DONNELLY: There is a parkland fee for the two units of \$4,000. So a sign-off letter and revised plans from Pat.

MR. HINES: Yes.

CHAIRMAN EWASUTYN: I'll move for a motion then to grant site plan approval and ARB approval subject to the conditions of the resolution that Mike Donnelly presented for the Moroney two- family residence.

MR. GALLI: So moved.

MR. WARD: Second.

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

(No response.)

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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. So
carried.

Thank you.

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

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

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

DATED: November 27, 2013

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

----- X
In the Matter of

GIBSON ESTATES
(2013-09)

Final Approval

----- X

BOARD BUSINESS

Date: November 7, 2013
Time: 8:45 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

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

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

----- X

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

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MR. PROFACI: We have two items of Board Business. Gibson Estates, project 2013-09. Final approval, received County Planning comments.

Mike Donnelly.

MR. DONNELLY: This action had been on and ready for action but it was adjourned not for the County -- was it the County Planning that was missing?

MR. HINES: County Planning.

MR. DONNELLY: You now received it.

MR. HINES: We have received it. They have a binding comment that they don't believe the flag lots meet the intent of their design guidelines.

MR. DONNELLY: Because it fails to take into account the parent parcel constraints and the existing neighborhood. I said during the work session that I almost wondered whether that was a word processing mistake because it's the same language that came from the earlier project. What it means, however, as written is for you to approve this project you would have to vote by a majority plus one of your membership to overrule

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their recommendation. You have to state in your resolution why you were overruling that recommendation. On the last occasion where they made that recommendation, after examining the neighborhood and the area and the site constraints as shown on the site plan, you concluded that the Planning Board is fully familiar with the surrounding neighborhood and you reject the finding of the Planning Department that the proposed layout is inconsistent with the surrounding neighborhood. The size of the lots proposed is consistent with the surrounding neighborhood and fully compliant with the Town's subdivision regulations, and you further conclude that the subdivision layout appropriately takes into account the parent parcel constraints. I think indeed it's because of those constraints that the layout ended up the way it did, as I recall the sequence of event.

MR. HINES: We went through several versions of the subdivision layout.

MR. DONNELLY: You would need to include findings like that. If you're satisfied with that, that's what I had written down.

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In terms of your conditions, we need a sign-off letter from Pat on his memo of September 5, 2013. We will reference and incorporate any conditions of the ZBA appeals decision granted on June 27, 2013. This is subject to review by the Orange County Department of Public Works for the driveway location, this being on a County road. The houses and wells shown on the plat show construction near the edge of the allowable building envelop so staking will have to take place in the field. We will need to review a common driveway easement and maintenance agreement. I will need to sign off on that. The existing septic system located in the area of lot -- of the lot 2 access must be reconstructed prior to map signing. Finally, the requirement of the payment of parkland fees for the new lots in the subdivision in the total amount after \$6,000.

CHAIRMAN EWASUTYN: Jerry or Pat, do you have anything to add to that?

MR. HINES: No.

MR. CANFIELD: Nothing additional.

CHAIRMAN EWASUTYN: Then I'll move to

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GIBSON ESTATES

112

grant approval for the Gibson Subdivision subject
to the conditions presented by Mike Donnelly.

MR. WARD: So moved.

MR. FOGARTY: Second.

CHAIRMAN EWASUTYN: I have a motion by
John Ward. I have a second by -- was it you,
Tom?

MR. FOGARTY: Yes.

CHAIRMAN EWASUTYN: 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. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Myself. So
carried.

(Time noted: 8:50 p.m.)

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

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DATED: November 27, 2013

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

----- X

In the Matter of

LOCAL LAW - IB ZONE LAW TEXT CHANGE
BANKS AND RESTAURANTS

----- X

BOARD BUSINESS

Date: November 7, 2013
Time: 8:50 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.
PATRICK HINES
GERALD CANFIELD

----- X

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MR. PROFACI: Mike and Jerry, the
new local law.

MR. HINES: It's not the text change
that's currently before the Town Board. It has
to do with the cargo containers.

MR. DONNELLY: I think it's a
communication that they incorporated our
recommendations into the law. I don't think it
requires any action. Am I incorrect?

MR. HINES: We had previously commented
on it and they have made some revisions based on
those comments.

CHAIRMAN EWASUTYN: Okay. That's that.
I'll move for a motion to close the
Planning Board meeting of the 7th of November.

MR. GALLI: So moved.

MR. WARD: Second.

CHAIRMAN EWASUTYN: I have a motion by
Frank Galli and a second by John Ward. Any
discussion of the motion?

(No response.)

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

MR. GALLI: Aye.

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MR. MENNERICH: Aye.

MR. PROFACI: Aye.

MR. FOGARTY: Aye.

MR. WARD: Aye.

CHAIRMAN EWASUTYN: Aye.

(Time noted: 8:52 p.m.)

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

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

DATED: November 27, 2013