

TOWN OF WARWICK PLANNING BOARD

April 6, 2011

Members present: Chairman, Benjamin Astorino
Russell Kowal, Dennis McConnell
Roger Showalter, Carl Singer, Beau Kennedy
Laura Barca, HDR Engineering
J. Theodore Fink, Greenplan
John Bollenbach, Planning Board Attorney
Connie Sardo, Planning Board Secretary

The regular meeting of the Town of Warwick Planning Board was held Wednesday, April 6, 2011 at the Town Hall, 132 Kings Highway, Warwick, New York. Chairman, Benjamin Astorino called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

PUBLIC HEARING OF Warwick Isle Corp.

Application for Preliminary Approval for filing a 33-Lot Cluster subdivision in Sections and an Application for Final Approval for Section I to consist of a proposed 7-Lot Cluster subdivision, and Special Use Permit for the 3-Affordable Homes, situated on tax parcel S 3 B 1 L 6.21; parcel located on the northern side of Merritts Island Road at the intersection with County Route 1, in the SL zone, of the Town of Warwick, County of Orange, State of New York. A SEQR Negative Declaration was adopted on, June 21, 2006.

Representing the applicant: Kirk Rother, Engineer.

Connie Sardo: We have just received the certified mailings for the Warwick Isle public hearing.

Mr. Astorino: Thank you.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments: 02/07/11
 - a. How will open space be delineated?
 - b. Will there a conservation easement or deed restriction?
 - c. Recommend reconfiguring open space for more contiguous area.
4. Conservation Board comments: 04/05/11
 - a. Given the perceived visual impact of this proposed subdivision, it is requested that this project be treated as if it were within the Ridgeline Overlay District.
5. Architectural Review Board comments: 04/01/11 no comments at this time.
6. OCDOH granted approval for this subdivision on 04/14/09; all work must be completed within 5 years or an extension must be requested from OCDOH citing the reason why the work was not completed within 5 years. Phase 1 will require OCDOH approval and signature before being filed with Orange County Clerk's Office.
7. The specifications for the vegetated swale should be included in the Boulevard Cross Section, Sheet 10 of 11.

8. Open Space C1 is part of Lot 25 (Section 2) and should not be shown in the Section 1 plans.
9. The line between OS A1 and Lot 2 should be dashed (Sheet 2).
10. Sheet 1 Note on sketch should be updated to show the lot numbers that are included in Section 1 of this subdivision.
11. Sheet 1, Driveway Notes 3, 4, and 5 – each note should specifically identify which lots are applicable to each note.
12. Sheet 1, Driveway Note 7 should remove references to Town of Warwick DPW and NYSDOT because Pine Island Turnpike is a County Road.
13. Sheet 1, Driveway Notes should be updated to include another required note: All driveways over 1000-ft in length shall install driveway markers as prescribed by the Town's 9-1-1 Coordinator before a Certificate of Occupancy is issued.
14. The length of the proposed post and rail fencing to be installed in Section 1 shall be clarified on the plans.
15. The location of the proposed post and rail fencing should be clarified on the plans (on which side of the drainage ditch and easement to allow maintenance by adjoining farmer).
16. The drainage and curtain drain easements shown should be clarified to show the beneficiary and who is responsible for maintenance.
17. Planning Board to discuss any specific color and gauge of the wire mesh used with the post and rail fencing.
18. Street trees to be provided outside of the Town's future right-of-way; provide locations and details on the plans.
19. Add a note to the plans stating that the limits of disturbance may not be altered. (This is to keep the homes the greatest distance possible from the adjoining farming operations.)
20. Applicant to verify speed limit on the County Road.
21. 03/10/11 SWPPP Page 4 states that a copy of the Notice of Termination (NOT) is located in Appendix A; there is not a copy of the NOT in Appendix A.
22. 03/10/11 SWPPP Page 4 states that pre and post developed drainage maps are included in Appendix H; these maps were not included in Appendix H.
23. 03/10/11 SWPPP Page 5 the sheet number of the drawing with the water quality swale calculations should be referenced here.
24. 03/10/11 SWPPP Page 5 the applicant should clarify if a backup drainage district is proposed if the HOA fails to provide adequate maintenance.
25. 03/10/11 SWPPP Page 12 seems to show that the balance of the roadway is being constructed in Section 2; the sectioning of the project should be represented in the phasing of the stormwater plan.
26. 03/10/11 SWPPP Page 7 and NOI #9 discussing soil groups at the project site do not appear to be consistent.
27. 03/10/11 SWPPP Page 8 and NOI #27 discussing the type of stormwater ponds do not appear to be consistent.
28. 03/10/11 SWPPP NOI #38 and #39: The MS4 form needs to be completed for this project.
29. 03/10/11 SWPPP does not include documentation supporting the determination of permit eligibility with regard to Historic Places or Archeological Resources; this information should be added as an Appendix (letter from SHPO, drawing with identified areas, and other information as requested in GP 0-10-001 Part III.A.8).
30. 03/10/11 SWPPP Page 9 states that the stormwater management practices shall be inspected in accordance with Appendix E; the entity responsible for the inspections should be specifically stated.

31. 03/10/11 SWPPP Page 9 states that the stormwater management practices shall be inspected and maintained on a monthly basis...; the entity responsible for these inspections should be specifically stated. Checklists should also be provided for these post-construction inspections.
32. The calculations in Appendix C should be clearly labeled Pre- and Post-Developed.
33. The reaches and basins shown in Appendix C should be labeled the same as on the Drainage maps.
34. If Reach 1W (swale behind lots 12-19), Basin 2W (swale behind lots 4-9), Basin 3E (swale behind lot 2), and Basin 2E (behind lot 2) are proposed as a stormwater management practice, the water quality volume must be calculated.
35. The Runoff Reduction Volume (RRv) must be calculated for Stormwater Management Practices. RRv provided must be greater than RRv required.
36. Soil testing is required to show that infiltration practices are suitable (NYS Stormwater Management Design Manual 2010, Section 6.3.1, page 6-35).
37. Pretreatment is required for infiltration practices.
38. In Pond East planting schedule, provide species for sedges (which ones are specified).
39. In Pond East planting schedule, provide species for smartweed (some are invasive, some are not native, which one is specified).
40. The 25 buffer of no vegetation should only apply to the spillway, not the entire pond. Provide shrub and tree plantings as well as herbaceous plants.
41. Provide a meadow mix. Is this to be seeded with a meadow mix, if so, provide.
42. Provide planting details for herbaceous, seed, and any other additional plant types.
43. Applicant to confirm that there is no disturbance on the lands determined archeologically sensitive by State Historic Preservation Officer (SHPO).
44. Sheet 1, Note 27 should be revised to "...and including annual spring cleaning.
45. The location and declaration of the drainage easements to be conveyed to Pine Island Turf Nursery to maintain the ditches clear and flowing should be shown on the plan.
46. Marketing Plan for affordable housing units must be accepted by the Town Board.
47. Marketing Plan declaration must be noted on the plan.
48. The following declarations must be shown on the drawing: no further subdivision (Sheet 1, Note 15), open space (Sheet 1, Note 16), archeological sensitive areas (Sheet 1, Note 17), road maintenance (Sheet 1, Notes 18, 26 & 27), all easements (Sheet 1, Note 24), and reclamation of the temporary turnaround areas (Sheet 1, Note 25).
49. The declarations for aquifer overlay notes and agricultural overlay notes will be required to be shown on the drawing.
50. Provide offers of dedication for roadway (Sheet 1, Note 19) with deed.
51. Provide offer of dedication for 25-ft wide dedication of Merritts Island Road (on Lot 32) and County Route 1.
52. Provide documentation of Home Owner's Association, including roadway maintenance (e.g., snow plowing) before and after Town accepts roadway dedication, and post and rail fencing maintenance.
53. Surveyor to certify that iron rods have been set at all property corners.
54. Payment of parkland fees.
55. Posting of appropriate bonds (Performance Bond, 3-year Stormwater Maintenance and Landscape Bond), including restoration required to remove cul-de-sac at end of Section 1 when Section 2 is being constructed.
56. Payment of all fees.

The following comment submitted by the Conservation Board, dated 4/6/11:

Warwick Isle Corp. - Here are CB comments on May 17, 2006 Agenda:

Due to the visual impact of this proposed subdivision, the CB was wondering whether the PB could ask the applicant to treat this project as if it were in a ridgeline overlay district.

Since this project has been dormant for almost 5 years, it might be helpful to have a refresher, before putting in on for Public Hearing.

The following comment submitted by the ARB:

Warwick Isle Corp. – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: The Negative Declaration was adopted by the Planning Board prior to preliminary subdivision approval. I have gone back and reviewed the Negative Declaration to make sure that all of the issues that were the basis for the Negative Declaration were properly addressed by the final subdivision plans. Several months ago when this project first came back before the Planning Board, we had a letter that was incorporated in the SEQR review process from NYSHPO. They had specific areas that they had identified as being areas that were sensitive. They were fine with issuing a letter that indicated no adverse impacts as long as those areas were avoided. Kirk and I had coordinated on that. There was a portion of one of the stormwater basins that was located in one of these areas. Kirk has moved that stormwater basin out of the area that was a concern by NYSHPO. That was the only SEQR issue that needed to be addressed.

Comment #2: Applicant to discuss project.

Kirk Rother: The application before the Board was for preliminary approval of a 33-Lot cluster subdivision. Warwick Isle originally received preliminary approval for this subdivision on 6/21/06. The reason the Board would be considering reissuing preliminary approval is because the applicant would now like to file the map in sections due to the current economy. The layout of the subdivision since that preliminary approval on 6/21/06 has not changed. Between then and now, we have secured the OCHD approval for the realty subdivision for supplying sewage disposal. The OCHD permit was secured on 4/14/09. Looking at the map, this top layout is the one that had received preliminary approval back in the year 2006. The bottom layout is the layout that we are currently seeking. Both layouts are identical. The only thing that is slightly different is the conservation area that is located over here is a little bit larger than the one from 2006. We have made it smaller right now, so that it would coincide with the conservation area that is shown on this plan, which is the plan that was approved by NYSHPO. As far as the placement of houses, well, septic, and roadways, they are all identical with the preliminary approval. We are also asking for final approval of Section I, it is proposed to be the first 6 lots from the subdivision. Looking at the map, Section II would be in the middle of the site. Section III, would be the balance of the site.

Comment #3: Conservation Board comments: 02/07/11

- a. How will open space be delineated?
- b. Will there a conservation easement or deed restriction?
- c. Recommend reconfiguring open space for more contiguous area.

Comment #4: Conservation Board comments: 04/05/11

- a) Given the perceived visual impact of this proposed subdivision, it is requested that this project be treated as if it were within the Ridgeline Overlay District.

Mr. Astorino: We have a Conservation Board comment, dated 4/6/11 for the record.

Comment #5: Architectural Review Board comments: 04/01/11 no comments at this time.

Comment #6: OCDOH granted approval for this subdivision on 04/14/09; all work must be completed within 5 years or an extension must be requested from OCDOH citing the reason why the work was not completed within 5 years. Phase 1 will require OCDOH approval and signature before being filed with Orange County Clerk's Office.

Mr. Bollenbach: Kirk, is Note #6 stated on the plans?

Kirk Rother: Yes.

Mr. Bollenbach: Ok. We will keep comment #6 as a place keeper.

Kirk Rother: On the map, it is Note #10.

Mr. Bollenbach: Ok.

Mr. Astorino: The rest of these comments discuss the SWPPP.

Mr. McConnell: Kirk, is the 5 years from the April 9th date?

Kirk Rother: Yes. It is from OCHD approval.

Mr. McConnell: So, we are looking at 3 years at this point.

Kirk Rother: That is correct.

Mr. McConnell: Ok. Thank you.

Mr. Astorino: Laura, it seems like we have numerous comments on the SWPPP. We have upgraded the SWPPP. Is that correct?

Laura Barca: Yes. The SWPPP has been upgraded. More than half of the comments are related to the SWPPP.

Mr. Astorino: Ok. I also see comments regarding the Marketing Plan. That would have to be provided. That would have to be done as a conditional of final approval. Is that correct?

Mr. Bollenbach: Yes. That would have to be provided to the Town Board.

Mr. Astorino: We have to talk about the fence.

Mr. Bollenbach: That would be comment #17. If the Board wants to discuss that, we could have it to the Planning Board Engineer's specifications. It is supposed to be a post and rail fence that will be treated. There will be some type of a wire mesh on there. There were some notes on there that didn't specify a color or a coating.

Mr. McConnell: Will there be some distance off the ground? I'm thinking about when we talked about fences over at Black Meadow.

Mr. Bollenbach: Kirk, do we have the detail on that? I believe it is located off the ground. I don't know the specific details. I think it was 6" off the ground.

Mr. McConnell: Ok.

Mr. Astorino: I believe that the Board would want the entirety of the fence put up at this time for Section I.

Mr. McConnell: I agree. I don't have a problem leaving it to the Board's Planner's standards.

Mr. Bollenbach: I am going to add to comment #17, all fencing to be installed.

Laura Barca: I have that stated in comment #14.

Mr. Bollenbach: Ok.

Kirk Rother: Just to make the public aware, we are talking about a fence that we had agreed upon when we had a public hearing for Section I to try and protect as best as we can the Pine Turf Nursery and the people from this subdivision. It will be a post and rail fence. It will not be a chain-link fence, which would be an eyesore. The post and rail fence has a welded wire 10 gage mesh screen attached to it.

Mr. Bollenbach: Directly along the property line depending on the easement for maintaining the drainage ditching, that might be relocated. That is why I have it to the Planning Board Engineer's specification.

Laura Barca: That is what I had in comment #15. It is my understanding that on the applicant's side there is going to be a water quality swale used to manage their stormwater. Then, there is going to be the fencing and then on the opposite side of that there will be the existing drainage that the farmers use for irrigation.

Mr. Bollenbach: Laura, are there any other comments that we would want to discuss?

Laura Barca: Comment #19 regarding adding a note to the plans stating that the limits of disturbance may not be altered. The purpose of that comment is specifically so that the houses that are the closest to the farms cannot move closer to the farms. It is to keep them exactly where they are located on the plan.

Mr. Bollenbach: Generally the way it is, once a house location is approved, it can be moved except in the Ridgeline Overlay. We want to have a more specific detail as to the limits of disturbance so that those dwellings cannot be moved. There would still be a little flexibility within the limits of disturbance, but they wouldn't be able to further encroach into the open areas.

Comment #7: The specifications for the vegetated swale should be included in the Boulevard Cross Section, Sheet 10 of 11.

Comment #8: Open Space C1 is part of Lot 25 (Section 2) and should not be shown in the Section 1 plans.

Comment #9: The line between OS A1 and Lot 2 should be dashed (Sheet 2).

Comment #10: Sheet 1 Note on sketch should be updated to show the lot numbers that are included in Section 1 of this subdivision.

Comment #11: Sheet 1, Driveway Notes 3, 4, and 5 – each note should specifically identify which lots are applicable to each note.

Comment #12: Sheet 1, Driveway Note 7 should remove references to Town of Warwick DPW and NYSDOT because Pine Island Turnpike is a County Road.

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Comment #20: Applicant to verify speed limit on the County Road.

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Comment #22: 03/10/11 SWPPP Page 4 states that pre and post developed drainage maps are included in Appendix H; these maps were not included in Appendix H.

Comment #23: 03/10/11 SWPPP Page 5 the sheet number of the drawing with the water quality swale calculations should be referenced here.

Comment #24: 03/10/11 SWPPP Page 5 the applicant should clarify if a backup drainage district is proposed if the HOA fails to provide adequate maintenance.

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Comment #32: The calculations in Appendix C should be clearly labeled Pre- and Post-Developed.

Comment #33: The reaches and basins shown in Appendix C should be labeled the same as on the Drainage maps.

Comment #34: If Reach 1W (swale behind lots 12-19), Basin 2W (swale behind lots 4-9), Basin 3E (swale behind lot 2), and Basin 2E (behind lot 2) are proposed as a stormwater management practice, the water quality volume must be calculated.

Comment #35: The Runoff Reduction Volume (RRv) must be calculated for Stormwater Management Practices. RRv provided must be greater than RRv required.

Comment #36: Soil testing is required to show that infiltration practices are suitable (NYS Stormwater Management Design Manual 2010, Section 6.3.1, page 6-35).

Comment #37: Pretreatment is required for infiltration practices.

Comment #38: In Pond East planting schedule, provide species for sedges (which ones are specified).

Comment #39: In Pond East planting schedule, provide species for smartweed (some are invasive, some are not native, which one is specified).

Comment #40: The 25 buffer of no vegetation should only apply to the spillway, not the entire pond. Provide shrub and tree plantings as well as herbaceous plants.

Comment #41: Provide a meadow mix. Is this to be seeded with a meadow mix, if so, provide.

Comment #42: Provide planting details for herbaceous, seed, and any other additional plant types.

Comment #43: Applicant to confirm that there is no disturbance on the lands determined archeologically sensitive by State Historic Preservation Officer (SHPO).

Comment #44: Sheet 1, Note 27 should be revised to "...and including annual spring cleaning.

Comment #45: The location and declaration of the drainage easements to be conveyed to Pine Island Turf Nursery to maintain the ditches clear and flowing should be shown on the plan.

Comment #46: Marketing Plan for affordable housing units must be accepted by the Town Board.

Comment #47: Marketing Plan declaration must be noted on the plan.

Comment #48: The following declarations must be shown on the drawing: no further subdivision (Sheet 1, Note 15), open space (Sheet 1, Note 16), archeological sensitive areas (Sheet 1, Note 17), road maintenance (Sheet 1, Notes 18, 26 & 27), all easements (Sheet 1, Note 24), and reclamation of the temporary turnaround areas (Sheet 1, Note 25).

Comment #49: The declarations for aquifer overlay notes and agricultural overlay notes will be required to be shown on the drawing.

Comment #50: Provide offers of dedication for roadway (Sheet 1, Note 19) with deed.

Comment #51: Provide offer of dedication for 25-ft wide dedication of Merritts Island Road (on Lot 32) and County Route 1.

Comment #52: Provide documentation of Home Owner's Association, including roadway maintenance (e.g., snow plowing) before and after Town accepts roadway dedication, and post and rail fencing maintenance.

Comment #53: Surveyor to certify that iron rods have been set at all property corners.

Comment #54: Payment of parkland fees.

Comment #55: Posting of appropriate bonds (Performance Bond, 3-year Stormwater Maintenance and Landscape Bond), including restoration required to remove cul-de-sac at end of Section 1 when Section 2 is being constructed.

Comment #56: Payment of all fees.

Mr. Astorino: Ok. We will list comments 7 through 56 for the record. Do any Board members or Professionals have any comments? This is a public hearing. If there is anyone in the audience wishing to address the Warwick Isle Public Hearing, please rise and state your name for the record.

Charles Lain, Jr.: I own the Pine Island Turf Nursery. I have a couple of concerns. We have touched on the fence issue. Somewhere I remember seeing the specifications on the fence. I also have concerns about the drainage. Looking at the map, the drainage ditch that is located here currently floods. What I needed was a new ditch. It loops around the property line. I would like to have this ditch moved to the outside of the property line. I would want the applicant to dig that ditch for me. I already have a ditch. It has been there for approximately 16 years.

Laura Barca: Would it be better to leave that ditch where it is and grant you access to it and make sure that your ditch is there and the fence is on the opposite side?

Kirk Rother: We spoke about this at preliminary approval. Looking at the map, this corner located here is black dirt on our property.

Charles Lain, Jr.: Right.

Kirk Rother: There are ditches located on that property now.

Charles Lain, Jr.: Right.

Kirk Rother: At that time, it doesn't show up on this phase, phase 1 because we are not proposing development on that at this time. But, on the overall plan, we show proposed easements to your benefit.

Mr. Bollenbach: We could relocate the fence.

Charles Lain, Jr.: Ok.

Mr. Bollenbach: Kirk, as we progress with the description of the easement areas, maybe you could have Mr. Lain involved with that. We are trying to address your concerns. I hope it accurately reflects your intent.

Charles Lain, Jr.: Ok. If the applicant receives this first phase approval, is there a date when it would start?

Mr. Bollenbach: After the approval, they have a 3-year time period to start construction. That is the terms and conditions of the approval in sections. It is good for 3-years.

Kirk Rother: I could tell you that the applicant would like to start construction this year for Section I.

Charles Lain, Jr.: Ok.

Mr. Bollenbach: Also, what we would like to have simultaneously before any C of O's are issued that the fencing would be installed and those easements would be in place. This way you would be able to enter on the property at the earliest time at your convenience so that you could maintain the drainage.

Mr. Astorino: The fence should be installed before.

Mr. Bollenbach: It will be installed so that it doesn't interfere with the drainage.

Mr. Astorino: Kirk had pointed that out. You will need to show the schematics out here as we go further on phase 1 showing the fence in its entirety.

Laura Barca: John, if the fence in its entirety is built as part of Section I, then the easements that are in Section II that grant Mr. Lain the opportunity to maintain those easements, it should also be granted in Section I.

Mr. Bollenbach: Yes. Correct. What it is, I am not looking at Section II or Section III. I am just looking at the remainder. The easements happen to be in the remainder of the entire parcel. That should be granted now.

Laura Barca: Ok.

Charles Lain, Jr.: Maybe, Kirk Rother could meet with me.

Kirk Rother: Yes.

Charles Lain, Jr.: Ok. Thank you.

Mr. Astorino: Is there anyone else wishing to address the Warwick Isle application?

Ron Sgtyndor: When we were at the last public hearing, I brought up concerns about the wells when they were drilled in the back. When they were drilled, our well went pretty much dry. It was brought up that they were going to put something in to test our well if their wells were drawing down and if that would affect our well. That has not happened yet. I was wondering if that would be part of this.

Kirk Rother: I don't remember ever offering to monitor adjoining wells. We did drill 4-wells on this property. Those wells ranged from 110 feet to 475 feet at 6 g.p.m to over 50 g.p.m.

Ron Sgtyndor: We brought it up at one of the last approval meetings. It was said that it would be monitored. We haven't seen anything yet.

Kirk Rother: Ok.

Mr. Bollenbach: Ted and Laura, please take a look into that.

Laura Barca: Ok.

Ron Sgtyndor: Thank you.

Mr. Astorino: Is there anyone else wishing to address the Warwick Isle application?

Steve Bogdanski: I am a neighbor with Pine Island Turf. I enter his driveway. I have a R.O.W. I brought this up at the last meeting. Has anyone taken a look at the County Road that goes over the hill?

Mr. Astorino: They had to get a County DOT permit.

Steve Bogdanski: There is a passing lane. There are chances for numerous accidents. I don't know if the County would be changing that.

Mr. Astorino: Did the County grant that permit?

Mr. Bollenbach: We could take a look at that. There was a petition from the Town Board to the County regarding the condition of the County Road, the speed limit, and the passing zones. I don't know if they had made any revisions to the speed limit.

Steve Bogdanski: No. They have not made any revisions to the speed limit.

Mr. Bollenbach: I believe that was forwarded to the County. We will confirm that.

Mr. Astorino: The County has to issue an entrance permit for their road.

Steve Bogdanski: Ok.

Mr. Astorino: If there was an issue, you would think they would look into it.

Steve Bogdanski: Did the Planning Board address it as an issue?

Mr. Astorino: We sent it to the County. They have to make a decision on their road on whether they could have an entrance or not.

Steve Bogdanski: Ok. What about the passing lane?

Mr. Astorino: John had just pointed out that a petition will be sent out from the Town Board to the County regarding the speed limit and the passing zone.

Mr. Bollenbach: Yes. Correct.

Steve Bogdanski: Ok. Thank you.

Mr. Astorino: Is there anyone else wishing to address the Warwick Isle application?

Alice Rajnert: This will be done in 3 phases. Is it going to take another 2 or 3 years for phase 1 to be finished or the whole project?

Mr. Astorino: They would have 3 years to do phase 1.

Alice Rajnert: Ok. I am located on Merritts Island Road. Two years ago when I came in, I was asking about a shed which is a 3-story house. It is an old tenant's house. It is really an eyesore.

Mr. Astorino: Is it located on this property?

Alice Rajnert: It is on this property. I showed to Mr. Rother the last time. I was wondering what would be happening with that old house. How could we get it to be torn down?

Kirk Rother: Looking at the map, are you looking at this little structure here?

Alice Rajnert: Yes.

Kirk Rother: It will be removed. We will add that to the plans.

Mr. Bollenbach: Kirk, what do you want to call that?

Kirk Rother: The existing structure on Lot 32 is to be removed.

Mr. Astorino: Ok.

Mr. Astorino: Is there anyone else wishing to address the Warwick Isle application? Let the record show no further public comment.

Mr. Fink: Just to let the Board know, SEQR has been complied with at the time of the original preliminary approval.

Mr. McConnell makes a motion to close the public hearing.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Mr. McConnell makes a motion on the Warwick Isle application, granting Preliminary Approval for filing a 33-Lot Cluster subdivision in Sections, and Special Use Permit for the 3-Affordable Homes, situated on tax parcel S 3 B 1 L 6.21; parcel located on the northern side of Merritts Island Road at the intersection with County Route 1, in the SL zone, of the Town of Warwick, County of Orange, State of New York. A SEQR Negative Declaration was adopted on, June 21, 2006.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Mr. McConnell makes a motion on the Warwick Isle application, granting Final Approval (Vote 5-0-0) for filing Section I to consist of a proposed 7-Lot Cluster subdivision, including a Special Use Permit for the one-affordable home Lot #5, situated on tax parcel S 3 B 1 L 6.21; parcel located on the northern side of Merritts Island Road at the intersection with County Route 1, in the SL zone, of the Town of Warwick, County of Orange, State of New York. A SEQR Negative Declaration was adopted on, June 21, 2006. Final Approval subject to the following conditions:

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6. Sheet 1, Driveway Notes 3, 4, and 5 – each note should specifically identify which lots are applicable to each note.
7. Sheet 1, Driveway Note 7 should remove references to Town of Warwick DPW and NYSDOT because Pine Island Turnpike is a County Road.
8. Sheet 1, Driveway Notes should be updated to include another required note: All driveways over 1000-ft in length shall install driveway markers as prescribed by the Town's 9-1-1 Coordinator before a Certificate of Occupancy is issued.
9. The length of the proposed post and rail fencing to be installed in Section 1 shall be clarified on the plans.
10. The location of the proposed post and rail fencing should be clarified on the plans (on which side of the drainage ditch and easement to allow maintenance by adjoining farmer).
11. The drainage and curtain drain easements shown should be clarified to show the beneficiary and who is responsible for maintenance.
12. Provide fence detail, specific color and gauge of the wire mesh used with the post and rail fencing to the Town Engineer's specifications.
13. Street trees to be provided outside of the Town's future right-of-way; provide locations and details on the plans.
14. Add a note to the plans stating that the limits of disturbance may not be altered. (This is to keep the homes the greatest distance possible from the adjoining farming operations.)
15. Applicant to verify speed limit on the County Road.

16. 03/10/11 SWPPP Page 4 states that a copy of the Notice of Termination (NOT) is located in Appendix A; there is not a copy of the NOT in Appendix A.
17. 03/10/11 SWPPP Page 4 states that pre and post developed drainage maps are included in Appendix H; these maps were not included in Appendix H.
18. 03/10/11 SWPPP Page 5 the sheet number of the drawing with the water quality swale calculations should be referenced here.
19. 03/10/11 SWPPP Page 5 the applicant should clarify if a backup drainage district is proposed if the HOA fails to provide adequate maintenance.
20. 03/10/11 SWPPP Page 12 seems to show that the balance of the roadway is being constructed in Section 2; the sectioning of the project should be represented in the phasing of the stormwater plan.
21. 03/10/11 SWPPP Page 7 and NOI #9 discussing soil groups at the project site do not appear to be consistent.
22. 03/10/11 SWPPP Page 8 and NOI #27 discussing the type of stormwater ponds do not appear to be consistent.
23. 03/10/11 SWPPP NOI #38 and #39: The MS4 form needs to be completed for this project.
24. 03/10/11 SWPPP does not include documentation supporting the determination of permit eligibility with regard to Historic Places or Archeological Resources; this information should be added as an Appendix (letter from SHPO, drawing with identified areas, and other information as requested in GP 0-10-001 Part III.A.8).
25. 03/10/11 SWPPP Page 9 states that the stormwater management practices shall be inspected in accordance with Appendix E; the entity responsible for the inspections should be specifically stated.
26. 03/10/11 SWPPP Page 9 states that the stormwater management practices shall be inspected and maintained on a monthly basis...; the entity responsible for these inspections should be specifically stated. Checklists should also be provided for these post-construction inspections.
27. The calculations in Appendix C should be clearly labeled Pre- and Post-Developed.
28. The reaches and basins shown in Appendix C should be labeled the same as on the Drainage maps.
29. If Reach 1W (swale behind lots 12-19), Basin 2W (swale behind lots 4-9), Basin 3E (swale behind lot 2), and Basin 2E (behind lot 2) are proposed as a stormwater management practice, the water quality volume must be calculated.
30. The Runoff Reduction Volume (RRv) must be calculated for Stormwater Management Practices. RRv provided must be greater than RRv required.
31. Soil testing is required to show that infiltration practices are suitable (NYS Stormwater Management Design Manual 2010, Section 6.3.1, page 6-35).
32. Pretreatment is required for infiltration practices.
33. In Pond East planting schedule, provide species for sedges (which ones are specified).
34. In Pond East planting schedule, provide species for smartweed (some are invasive, some are not native, which one is specified).
35. The 25 buffer of no vegetation should only apply to the spillway, not the entire pond. Provide shrub and tree plantings as well as herbaceous plants.
36. Provide a meadow mix. Is this to be seeded with a meadow mix, if so, provide.
37. Provide planting details for herbaceous, seed, and any other additional plant types.
38. Applicant to confirm that there is no disturbance on the lands determined archeologically sensitive by State Historic Preservation Officer (SHPO).
39. Sheet 1, Note 27 should be revised to "...and including annual spring cleaning.
40. The location and declaration of the drainage easements to be conveyed to Pine Island Turf Nursery to maintain the ditches clear and flowing should be shown on the plan.

41. Marketing Plan for affordable housing units must be accepted by the Town Board.
42. Marketing Plan declaration must be noted on the plan.
43. The following declarations must be shown on the drawing: no further subdivision (Sheet 1, Note 15), open space (Sheet 1, Note 16), archeological sensitive areas (Sheet 1, Note 17), road maintenance (Sheet 1, Notes 18, 26 & 27), all easements (Sheet 1, Note 24), and reclamation of the temporary turnaround areas (Sheet 1, Note 25).
44. The declarations for aquifer overlay notes and agricultural overlay notes will be required to be shown on the drawing.
45. Provide offers of dedication for roadway (Sheet 1, Note 19) with deed.
46. Provide offer of dedication for 25-ft wide dedication of Merritts Island Road (on Lot 32) and County Route 1.
47. Provide documentation of Home Owner's Association, including roadway maintenance (e.g., snow plowing) before and after Town accepts roadway dedication, and post and rail fencing maintenance.
48. Surveyor to certify that iron rods have been set at all property corners.
49. Payment of parkland fees.
50. Posting of appropriate bonds (Performance Bond, 3-year Stormwater Maintenance and Landscape Bond), including restoration required to remove cul-de-sac at end of Section 1 when Section 2 is being constructed.
51. Existing Structure on Lot #32 to be removed prior to the issuance of any Certificates of Occupancy for the subdivision.
52. Payment Of All Fees.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Mr. Astorino: Kirk, you will be in contact with Mr. Lain. Laura, maybe you could set this whole thing up. I would like you to be out there also. Charles, leave you phone number with our Engineer. She will get in touch with you.

Charles Lain, Jr.: Ok. Thank you.

Mr. McConnell: I would like our Planning Board Attorney and our Engineer to check the records on the notion of monitoring wells. Where does that appear that we would be doing that?

Mr. Astorino: Yes. We will look into that.

Mr. McConnell: Ok. I just want to make sure it doesn't fall through the cracks.

Mr. Astorino: It will not.

Kirk Rother: Thank you.

PUBLIC HEARING OF Dr. Donald McCain and Imelda McCain

Application for Site Plan Approval for the construction and use of a pond located within "A Designated Protection Area" of Wawayanda Creek, situated on tax parcel S 49 B 1 L 90 and L 33.2 ; project located on the northern side of State Highway 94 South 485 feet east of Wawayanda Road, (230 State Highway 94), in the RU zone, of the Town of Warwick, County of Orange, State of New York.

Representing the applicant: Dave Getz, from Lehman & Getz Engineering. Dr. Donald McCain, applicant.

Connie Sardo: Mr. Chairman, We have just received the certified mailings for the McCain public hearing.

Mr. Astorino: Thank you.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments: 08/29/10
 - a. How many trees were cleared? (15±; mostly shrubs)
 - b. To what extent was grading & excavating conducted?
4. Additional Conservation Board comments: 02/07/11
 - a. Wetlands need to be properly delineated.
 - b. All new trees should be from approved species list.
5. Architectural Review Board comments:
 - a. No comments at this time (08/28/10)
6. OCPD, dated August 27, 2010: local determination with **binding comment** that a portion of Pond A is located within 100-ft of Wawayanda Creek and pond should be redesigned and relocated.
7. OCPD, dated February 17, 2011: local determination with **binding comment** that a wetland be created that is 2X the size of the disturbance within 100-ft of Wawayanda Creek.
8. A shared driveway agreement for the driveways on lots 49-1-89 and 49-1-90 should be submitted; both are owned by Dr. & Mrs. McCain.
9. According to §150-4, over 0.25-acre is not allowed to be cleared without a permit from the building department citing any planning board requirements.
10. All proposed features within the NYS right-of-way must be reviewed and approved by NYS DOT.
11. The size of the rip rap may need to be increased in the Swale Section A-A.
12. The slope and dimensions of the rip rap should be shown on the drawing.
13. The declaration information for the Aquifer and Agricultural Protection Overlays must be shown on the plan prior to the Chairman's signature.
14. Surveyor to certify that iron rods have been set at all property corners.
15. Payment of all fees.

The following comment submitted by the Conservation Board, dated 4/6/11:

Dr. Donald McCain and Imelda McCain – CB has no further comments.

The following comment submitted by the ARB:

Dr. Donald McCain and Imelda McCain – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: The Planning Board has declared itself Lead Agency. He have been reviewing it using the short EAF. There were a couple of issues that we were looking at in regards to SEQR. One issue had to do with the proximity of the site to agricultural operations. It is located within an Agricultural District. There had to be an Ag Data Statement filed on this project. There were Ag notes placed on the site plan. This project is also located within the Town's Aquifer Protection Overlay District. Those notes have also been placed on the plan. There was one additional one. There was a concern about the use of fertilizers in the area in the proximity of the pond and Wawayanda Creek. The applicant has agreed to not use fertilizers. That has been reflected in the Draft Negative Declaration. Since the pond is existing, we really looked at what had been done and what had been stabilized and landscaped. We had a field visit out to the site. We had seen that the area had been seeded. There was an issue of the potential presence of wetlands. There is a wetland shown on the map. The wetland was close to the area where work was done, but not including where the pond was actually dug. The area is not mapped as a State Protected Freshwater Wetland and field visits by an Environmental Conservation Officer with the NY State DEC did not identify violations of the Environmental Conservation Law. There was one thing that I felt that needed to be included since the landscaping has already been done, there should be a note added to the plan regarding survivability of the landscaping already installed. We have a provision in the Town Code of 3-year survivability. That was not on the plans. I recommend that note to be on the plans. We do have binding comments that we had received from Orange County Department of Planning. The County recommended that the applicant construct a wetland on the project site that is, at a minimum, twice as large in size as the area of the pond within the Town's Designated Protection Area. This recommendation would mean that a wetland of at least 6,000 square feet or more in size be constructed on the site. Because it is a binding comment, if the Board wants to act contrary to that recommendation the Town would have to do so with a majority plus one vote. We talked about this at the Work Session and out at the site visit. Since the physical alteration has already taken place because of the proximity to water resources and to Wawayanda Creek, it would be better rather than to construct a new wetland area and open up the soil and cause additional soil erosion and sedimentation impacts, it would be better to leave it as is. The last issue was the issue of outdoor lighting. There has been lighting notes placed on the site plan that the lighting on the property would comply with the Town Code. Those are the SEQR issues that we investigated.

Comment #2: Applicant to discuss project.

Dave Getz: Ted had said it all. I have nothing to add.

Comment #3: Conservation Board comments: 08/29/10

- a. How many trees were cleared? (15±; mostly shrubs)
- b. To what extent was grading & excavating conducted?

Comment #4: Additional Conservation Board comments: 02/07/11

- a) Wetlands need to be properly delineated.
- b) All new trees should be from approved species list.

Mr. Astorino: There are no further comments from the CB.

Comment #5: Architectural Review Board comments:

- a) No comments at this time (08/28/10)

Comment #6: OCPD, dated August 27, 2010: local determination with **binding comment** that a portion of Pond A is located within 100-ft of Wawayanda Creek and pond should be redesigned and relocated.

Comment #7: OCPD, dated February 17, 2011: local determination with **binding comment** that a wetland be created that is 2X the size of the disturbance within 100-ft of Wawayanda Creek.

Comment #8: A shared driveway agreement for the driveways on lots 49-1-89 and 49-1-90 should be submitted; both are owned by Dr. & Mrs. McCain.

Dave Getz: The Attorney is working on those.

Comment #9: According to §150-4, over 0.25-acre is not allowed to be cleared without a permit from the building department citing any planning board requirements.

Mr. Astorino: That is why you are here.

Mr. Bollenbach: That means you will obtain the permit.

Dave Getz: Ok.

Comment #10: All proposed features within the NYS right-of-way must be reviewed and approved by NYSDOT.

Dave Getz: We have sent the plans to NYSDOT. They are currently reviewing them.

Mr. Astorino: The permit should be forthcoming.

Comment #11: The size of the rip rap may need to be increased in the Swale Section A-A.

Mr. Astorino: We will look at that.

Comment #12: The slope and dimensions of the rip rap should be shown on the drawing.

Dave Getz: Ok.

Comment #13: The declaration information for the Aquifer and Agricultural Protection Overlays must be shown on the plan prior to the Chairman's signature.

Dave Getz: Ok.

Comment #14: Surveyor to certify that iron rods have been set at all property corners.

Mr. Bollenbach: I think the Board might want to consider to waive that. This is not a subdivision. This is just a site plan. I don't really think it is applicable.

Mr. Astorino: Do any Board members have any problems with that?

Mr. Kowal: No.

Mr. McConnell: No.

Mr. Showalter: No.

Mr. Astorino: Ok. We will strike comment #14.

Comment #15: Payment of all fees.

Dave Getz: Ok.

Mr. Bollenbach: We need to add comments 16 and 17. Comment #16, provide map note limiting fertilizer, pesticide, and herbicide application. Comment #17, provide 3-year landscape maintenance bond.

Mr. Astorino: Ok. Do any Board members or Professionals have any comments or concerns? This is a public hearing. If there is anyone in the audience wishing to address the McCain Pond application, please rise and state your name for the record. Let the record show no public comment.

Mr. McConnell makes a motion to close the public hearing.

Seconded by Mr. Singer. Motion carried; 5-Ayes.

Mr. Kowal makes a motion for the Negative Declaration.

Seconded by Mr. McConnell. The following Resolution was carried 5-Ayes.

617.12(b)

State Environmental Quality Review (SEQR)
Resolution Authorizing Filing of Negative Declaration

Name of Action: McCain Pond

Whereas, the Town of Warwick Planning Board is the SEQR Lead Agency for conducting the environmental review of a proposed pond within the Designated

Protection Area of the Wawayanda Creek, Town of Warwick, Orange County, New York, and

Whereas, there are no other involved agencies pursuant to SEQR, and

Whereas, the Planning Board has reviewed an Environmental Assessment Form (EAF) for the action dated 8/10/10, the probable environmental effects of the action, and has considered such impacts as disclosed in the EAF.

Now Therefore Be It Resolved, that the Planning Board adopts the findings and conclusions relating to probable environmental effects contained within the attached EAF and Negative Declaration and authorizes the Chair to execute the EAF and file the Negative Declaration in accordance with the applicable provisions of law, and

Be It Further Resolved, that the Planning Board authorizes the Chair to take such further steps as might be necessary to discharge the Lead Agency's responsibilities on this action.

Mr. Showalter makes a motion on the Dr. Donald McCain and Imelda McCain application, granting Site Plan Approval for the construction and use of a pond located within "A Designated Protection Area" of Wawayanda Creek, situated on tax parcel S 49 B 1 L 90 and L 33.2; project located on the northern side of State Highway 94 South 485 feet east of Wawayanda Road (230 State Highway 94), in the RU zone, of the Town of Warwick, County of Orange, State of New York. A SEQR Negative Declaration was adopted on April 6, 2011. Approval is granted subject to the following conditions:

1. A shared driveway agreement for the driveways on lots 49-1-89 and 49-1-90 should be submitted; both are owned by Dr. & Mrs. McCain.
2. According to §150-4, over 0.25-acre is not allowed to be cleared without a permit from the building department citing any planning board requirements. Obtain Permit.
3. All proposed features within the NYS right-of-way must be reviewed and approved by NYSDOT.
4. The size of the rip rap may need to be increased in the Swale Section A-A.
5. The slope and dimensions of the rip rap should be shown on the drawing.
6. The declaration information for the Aquifer and Agricultural Protection Overlays must be shown on the plan prior to the Chairman's signature.
7. Provide Map Note limiting fertilizer, pesticide, and Herbicide application.
8. Provide 3-Year Landscape Maintenance Bond.
9. Payment Of All Fees.

Seconded by Mr. Singer. Motion carried; 5-Ayes.

Dave Getz: Thank you.

Review of Submitted Maps:***Fairwick, LLC. / Fairgrounds #2***

Application for Site Plan Approval and Special Use Permit for the construction and use of commercial/retail facilities totaling 19,786 square feet in three buildings, entitled "***Fairgrounds #2***", situated on tax parcel S 51 B 1 L 40.1; project located on the northern side of NYS Route 94 approximately 1,000 feet east of Orange County Route 21, in the DS/OI zones, of the Town of Warwick, County of Orange, State of New York. Public Hearing was closed at the 2/7/11 Planning Board meeting. Previously discussed at the 3/16/11 Planning Board meeting.

Representing the applicant. Rob Spiak from Core States. Dave Getz from Lehman & Getz Engineering. Adrian Goddard from Goddard & Associates, Applicant.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments (02/07/11)
 - a. No comments at this time.
4. Architectural Review Board comments
 - a. Building 2 – formal recommendation to planning board
 - b. Building 3 – formal recommendation to planning board
 - c. Chase Bank – comments dated April 01, 2011
5. OC Planning Department (12/09/10)
 - a. Night sky lighting advisory comment.
6. Checklist (L) 9: Show all easements, deed restrictions, and covenants shown on the plans.
7. According to §164-43.4.G, lighting levels around an ATM must be in accordance with NYS ATM Safety Act. The lighting levels around the proposed ATM must be modified to reflect the appropriate levels.
8. It has been noted that the entire site's lighting will be reduced by 20% overnight. The method to accomplish this should be explained within the drawing set, including which lights will be effected, if dimming ballasts are necessary, and if lights need to be turned off. Provide nighttime lighting levels to show security lighting levels.
9. The language on Sheet 1 (on the site plan itself) states that the Marginal Access is to be dedicated... the language should be changed to the satisfaction of the planning board attorney.
10. A complete signage and striping plan (with appropriate details, i.e., Do Not Enter, One Way, etc.) should be submitted for the project site. Details have been added; overall plan needs to be shown.
11. Add a note to the plan: If the proposed uses for the remaining buildings are not known at the time of site plan approval for Fairgrounds #2, then the Applicant will have to make an application for an amended site plan approval if the proposed use requires substantial changes to the approved building. All other buildings, either previously approved or still conceptual must be shown. Prior to each approval the Applicant shall demonstrate that the parking space requirements, stormwater (in accordance with the Town Code requirements and including permeable pavers), water, and sewage needs have been provided.

12. OCDOH approval of modified water supply permit (approved design flow of 5,000 gpd proposed to be modified to 10,000 gpd) – OCDOH approval granted 03/22/11.
13. NYSDEC approval of modified sewerage discharge system (approved design flow of 5,000 gpd proposed to be modified to 10,000 gpd).
14. Possible re-location of sanitary sewer manhole to minimize disturbance for future connections to sanitary system.
15. Repair of infiltration problem at existing sewer facility (e.g., groundwater infiltration at pipe penetrations in the comminutor tank and possibly other tanks).
16. Sheet 1 Notes 9 and 17 seem to contradict each other; it is the Town's understanding that the Applicant has agreed to construct the marginal access road if the Town obtains the appropriate permits.
17. A note should be added to the plans stating that the Applicant will construct the Marginal Access Road prior to the Building Department issuing the second Certificate of Occupancy for Fairgrounds #2 or at the discretion of the Town Board.
18. The Applicant's wetland specialist should prepare a letter to the Planning Board stating that a wetland delineation was completed, including the date of delineation, who did the delineation, and appropriate data sheets.
19. The width of the proposed Marginal Access Road is shown to be 24-ft wide; a detail should be added to the plan showing the cross section of pavement proposed.
20. The 911 addresses should be shown on the plan.
21. As a conditional of final site plan approval for Fairgrounds #2, a three-ring binder with all color, texture, roofing samples, etc. shall be submitted and retained with the Building Department after final approval is granted.
22. Payment of all fees.
23. Payment of all bonds (landscaping, performance, construction trailer removal bond, construction inspection fees for landscaping and performance, and traffic mitigation fees).

The following comment submitted by the Conservation Board, dated 4/6/11:

Fairwick, LLC/Fairgrounds #2 – The CB has no further comments.

The following comment submitted by the ARB:

Fairwick, LLC/Fairgrounds #2 – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: On this project, the applicant had gone through the full EIS procedure several years ago. There was an original Findings Statement that was adopted by the Planning Board. Then there was a change in Fairgrounds #1. There was a change in the pad site. There was a change in ownership of the proposed supermarket. There were minor changes made to the Findings Statement. The Planning Board had issued an amended Findings Statement so that the final document would be accurate. Now, we have a situation for Fairgrounds #2. We have a different use entirely, different square footage, etc... We had asked the applicant to provide us with an updated EAF. We had asked them to address all of the changes that had been made from the prior approval and the original Findings Statement. The applicant had provided us with all the information that we needed. I had provided to the Planning Board back in December another "Amended" Findings Statement. I was looking over that today. I had found one paragraph that should be changed. It has to do with the marginal access road. I feel that it is important

to get the language in here right. In the Findings Statement, if you go to page 18 that was the only page that was changed. You could see with the revision marks any text that was to be removed has a strike through it. Any text that was added to it is in bold face type. I don't know if anybody could see that.

Mr. Astorino: Yes.

Mr. McConnell: The bold face doesn't show too well.

Mr. Fink: I think that happened because it was done in color. If you want, I could walk you through the changes. Essentially, at the timing when the original Findings Statement was adopted, there was no HOMARC proposed development. Now, HOMARC is proposed. Now the need for the marginal access road is now greater. The way the language has been amended is that the Planning Board waives the marginal access road requirement that at such time that permits have been obtained. The Town is moving forward with the application to obtain permits so that there could be a crossing in the wetland. The applicant has agreed to provide that marginal access road assuming the Town does obtain permits. It all hinges on that. If the Town doesn't obtain permits, then that would be the end of it. At least the language that is in here now is reflecting that.

Mr. McConnell: Ted, in that paragraph where you state until such time as wetland or other permits are obtained. Is that referring back to the potential need for State and/or Federal Government permit?

Mr. Fink: Yes. Correct.

Mr. McConnell: Maybe, we should clarify that in that sentence.

Mr. Fink: Ok.

Mr. Astorino: Ok. We will clarify that.

Comment #2: Applicant to discuss project.

Mr. Astorino: Ted did a good job explaining that.

Comment #3: Conservation Board comments (02/07/11)

- a. No comments at this time.

Comment #4: Architectural Review Board comments

- b. Building 2 – formal recommendation to planning board
- c. Building 3 – formal recommendation to planning board
- d. Chase Bank – comments dated April 01, 2011

Mr. Astorino: I believe there was a final set of comments that was sent out. There were a few changes on the different elevations. Do any Board members have any issues on them?

Mr. Kowal: I think those comments are simply straight forward.

Mr. Bollenbach: I want to jump to comment #21. Comment #21 stated as follow; *As a condition of final site plan approval for Fairgrounds #2, a three-ring binder with all color, texture, roofing samples, etc...shall be submitted and retained with the Building Department after final approval is granted.* I wanted to add another sentence to that. We will add to comment #21, architectural detail is to be finalized to the Town Planner's specifications.

Adrian Goddard: Ok.

John Bollenbach: We could strike comments 1 through 5.

Comment #5: OC Planning Department (12/09/10)

e. Night sky lighting advisory comment.

Comment #6: Checklist (L) 9: Show all easements, deed restrictions, and covenants shown on the plans.

Dave Getz: Ok.

Comment #7: According to §164-43.4.G, lighting levels around an ATM must be in accordance with NYS ATM Safety Act. The lighting levels around the proposed ATM must be modified to reflect the appropriate levels.

Dave Getz: We will address that.

Comment #8: It has been noted that the entire site's lighting will be reduced by 20% overnight. The method to accomplish this should be explained within the drawing set, including which lights will be effected, if dimming ballasts are necessary, and if lights need to be turned off. Provide nighttime lighting levels to show security lighting levels.

Mr. Astorino: Laura, overall would it be reduced by 20%?

Laura Barca: No. It would be during the late nighttime hours that it would be reduced by 20%.

Comment #9: The language on Sheet 1 (on the site plan itself) states that the Marginal Access is to be dedicated... the language should be changed to the satisfaction of the planning board attorney.

Dave Getz: Ok.

Comment #10: A complete signage and striping plan (with appropriate details, i.e., Do Not Enter, One Way, etc.) should be submitted for the project site. Details have been added; overall plan needs to be shown.

Dave Getz: Will do.

Comment #11: Add a note to the plan: If the proposed uses for the remaining buildings are not known at the time of site plan approval for Fairgrounds #2, then the Applicant will have to make an application for an amended site plan approval if the proposed use requires substantial changes to the approved building. All other buildings, either previously approved or still conceptual must be shown. Prior to each approval the Applicant shall demonstrate that the parking space requirements, stormwater (in accordance with the Town Code requirements and including permeable pavers), water, and sewage needs have been provided.

Mr. Bollenbach: Let me comment on that. Section 164-46 in the Code for change in uses, that could be done internally with the Building Department. We just want to have a tabulation or a calculation that they wouldn't be putting some use in there that would blow out the septic requirements, etc... It is just to keep a tally. It would also be for the Building Department to issue the individual C of O's for the change of occupancies. It is a routine type of thing.

Dave Getz: Ok.

Adrian Goddard: Ok.

Comment #12: OCDOH approval of modified water supply permit (approved design flow of 5,000 gpd proposed to be modified to 10,000 gpd) – OCDOH approval granted 03/22/11.

Dave Getz: Ok.

Comment #13: NYSDEC approval of modified sewerage discharge system (approved design flow of 5,000 gpd proposed to be modified to 10,000 gpd).

Mr. Astorino: Do we have that yet?

Dave Getz: No. It is in the works. If the flow records show that the Chase Bank, which is expected to be the first building to be built, if it could be added to the existing plant and if the flow numbers are under the capacity of that. We are under the understanding that could be added.

Mr. Bollenbach: Yes.

Dave Getz: Ok.

Comment #14: Possible re-location of sanitary sewer manhole to minimize disturbance for future connections to sanitary system.

Dave Getz: Yes.

Comment #15: Repair of infiltration problem at existing sewer facility (e.g., groundwater infiltration at pipe penetrations in the comminutor tank and possibly other tanks).

Mr. Astorino: I believe that has been handled and it is working fine. Laura, were you out there?

Laura Barca: I had seen it after the fact.

Dave Getz: It is working fine. I was out there today. After yesterdays rain, there were not any signs of leaking.

Mr. Astorino: Ok.

Laura Barca: Do you have any new flow calculations?

Dave Getz: No. I have not received those yet.

Laura Barca: Ok.

Mr. Astorino: Laura, according to Ed Butler, he mentioned that it was working.

Laura Barca: Ok.

Comment #16: Sheet 1 Notes 9 and 17 seem to contradict each other; it is the Town's understanding that the Applicant has agreed to construct the marginal access road if the Town obtains the appropriate permits.

Mr. Bollenbach: We will add to comment #16, revise to Planning Board Attorney's specifications.

Comment #17: A note should be added to the plans stating that the Applicant will construct the Marginal Access Road prior to the Building Department issuing the second Certificate of Occupancy for Fairgrounds #2 or at the discretion of the Town Board.

Laura Barca: I would like to add something to comment #17. The applicant will construct the marginal access road providing that the Town has obtained all of the necessary permits prior to the Building Department issuing a C of O.

Mr. Bollenbach: I want to clarify something on that. The way that it is currently proposed is that the marginal access road will be installed now up to the limits of the wetland buffer.

Adrian Goddard: Right.

Comment #18: The Applicant's wetland specialist should prepare a letter to the Planning Board stating that a wetland delineation was completed, including the date of delineation, who did the delineation, and appropriate data sheets.

Laura Barca: I had just received that today.

Comment #19: The width of the proposed Marginal Access Road is shown to be 24-ft wide; a detail should be added to the plan showing the cross section of pavement proposed.

Dave Getz: Ok.

Comment #20: The 911 addresses should be shown on the plan.

Dave Getz: Ok.

Comment #21: As a conditional of final site plan approval for Fairgrounds #2, a three-ring binder with all color, texture, roofing samples, etc. shall be submitted and retained with the Building Department after final approval is granted. Architectural detail is to be finalized to the Town Planner's specifications.

Dave Getz: Ok.

Comment #22: Payment of all fees.

Adrian Goddard: Ok.

Comment #23: Payment of all bonds (landscaping, performance, construction trailer removal bond, construction inspection fees for landscaping and performance, and traffic mitigation fees).

Adrian Goddard: Yes.

Mr. Astorino: Do any Board Members or Professionals have any other comments or concerns?

Mr. Showalter makes a motion to adopt Amended Findings Statement for site plan approval and special use permit for the construction and use of commercial/retail facilities totaling 19,786 square feet in three buildings, entitled "Fairgrounds" #2, situated on tax parcel S 51 B 1 L 40.1; project located on the northern side of NYS Route 94 approximately 1,000 feet east of Orange County Route 21, in the DS/OI zones, of the Town of Warwick, County of Orange, State of New York.

Seconded by Mr. McConnell. The following Amended Findings Statement was carried 5-Ayes.

Amended FINDINGS STATEMENT
State Environmental Quality Review Act (SEQR)
6 NYCRR Part 617.11

This Amended Findings Statement is issued pursuant to Article 8 of the New York Environmental Conservation Law - the State Environmental Quality Review Act (SEQR), and its implementing regulations at 6 N.Y.C.R.R. Part 617. The Town of Warwick Planning Board, as Lead Agency, makes the following findings:

Name of Action: The Fairgrounds

Description of Action: Site plan and special use permit approvals to facilitate development of a mixed commercial/retail use on approximately 16.4 acres of a 47.5 acre site. The development is comprised of an approximately

56,430 square foot (SF) supermarket which has been approved and constructed, and approximately 26,571 SF of other mixed commercial uses. A pad building on the Fairgrounds Phase 1 site received Site Plan and Special Use Permit approval from the Planning Board for an AutoZone retail store on October 6, 2010. The other mixed commercial uses will be located on Lot 51-1-40.1 (Fairgrounds Phase 2, 22.301 acres), while the supermarket and pad building are located on Lot 51-1-40.2 (25.228 acres).

Location: The proposed development is located on NYS Route 94 (New Milford Road) east of Sanfordville Road in the Town of Warwick, Orange County, New York (SBL prior to the filing of the approved subdivision plat was # 51-1-40)

Lead Agency: Town of Warwick Planning Board
Warwick Town Hall
132 Kings Highway
Warwick, NY 10990
Contact: Benjamin Astorino, Chairman
Phone: (845) 986-1127

Agency Jurisdiction: The Town of Warwick Planning Board, as Lead Agency, has been authorized to issue Site Plan Approval, Special Use Permits, and Subdivision Plat Approval in accordance with §§ 274-a, 274-b, and 276 of New York State Town Law, Article IV, Chapter 164, § 164-46 of the Town of Warwick Zoning Law and Article I, Chapter 137, § 137-1 of the Town of Warwick Subdivision Regulations.

SEQR Classification: Type I

Date Final EIS Filed: September 26, 2006

Date Findings Adopted: November 15, 2006

Dates Amended Findings Adopted: February 6, 2008 and April 6, 2011

I. INTRODUCTION

A. Development Concept

Fairgrounds, LLC (the “Applicant” or “Project Sponsor”) proposes to construct a mixed commercial/retail use development on approximately 16.4 acres of a +/- 47.5 acre site located on NYS Route 94 (New Milford Road) east of Sanfordville Road in the Town of Warwick, Orange County, New York (the “Project”). The mixed use development, known as “The Fairgrounds,” is comprised of an approximately 56,430 square foot (sf) supermarket, approximately 19,786 sf of mixed commercial uses and an approximately 6,785 square foot retail building for an AutoZone. The property is zoned for this use and subdivision approval was granted by the Town Planning Board on June 18, 2008. The Applicant is requesting preliminary site plan and special use permit

approvals for the 19,786 SF mixed commercial use on Lot 51-1-40.1. The Project will utilize on-site water supply and sewage disposal systems.

B. Procedural History and SEQR Review

The Town of Warwick Planning Board (the "Planning Board"), as SEQR lead agency, has conducted a site specific environmental review of the Project. This document is the lead agency's Findings Statement required pursuant to 6 N.Y.C.R.R. § 617.11.

In early 1999, an application for site plan, subdivision and special use permit approval for the Project was submitted to the Town of Warwick Planning Board ("Planning Board"). The Planning Board established itself as lead agency on July 7, 1999. The Applicant voluntarily offered to prepare and submit an Environmental Impact Statement ("EIS").

On September 1, 1999, after conclusion of a public scoping process, the Planning Board issued a final scoping document designating the potentially significant environmental impacts to be addressed in the Draft Environmental Impact Statement ("DEIS") for the Project. On January 19, 2005, the Planning Board accepted the DEIS as complete with respect to its scope, content and adequacy and issued a Notice of DEIS Completion and Notice of Public Hearing and caused the DEIS to be filed with all involved agencies. A Public Hearing on the DEIS as well as a public hearing on the preliminary site plan, subdivision and special use permit applications was held on February 16, 2005, upon which date the hearing was closed. Comments on the DEIS were received for an additional twelve (12) days following the close of the Public Hearing.

A Final Environmental Impact Statement ("FEIS") was prepared and accepted by the Board as complete on September 20, 2006. A Notice of Completion and the FEIS were filed with all involved agencies on September 26, 2006.

A Written Findings Statement was adopted and filed by the Planning Board on November 15, 2006 in accordance with 6 NYCRR 617.12(b). Subsequent to the adoption of the Findings Statement, the applicant proposed a change in the effluent discharge, from the proposed sewage treatment plant to a subsurface effluent disposal area rather than the previously proposed discharge to a surface discharge point. The change in discharge represents a project modification that requires both Planning Board and New York State Department of Environmental Conservation approvals. To address this project modification under SEQR, the Planning Board required the applicant conduct additional analysis to determine whether there existed any potential for a significant adverse impact to result from the change. As a result of the additional analysis, prepared in the form of a "Supplement to the Aquifer Impact Assessment: The Fairgrounds" and dated January 22, 2008, the Planning Board has addressed the potential for a significant adverse impact through the adoption of this Amended Findings Statement in accordance with 6 NYCRR 617.11(a). The Planning Board's engineers, TECTONIC Engineering Consultants P.C., has conducted an independent review of the "Supplement" and accepted its conclusions. The Planning Board, after reviewing the "Supplement," has concluded that the proposed change in the effluent discharge point is minor and will not result in a significant adverse environmental impact that would require the preparation of a Supplemental Environmental Impact Statement.

C. Site Characteristics

The Project site is located on NYS Route 94 (New Milford Road) east of Sanfordville Road in the Town of Warwick, Orange County, New York. The property is located in the Designated Shopping (DS), Office and Industrial Park (OI), and Aquifer Protection Overlay (AQ-O) Zoning Districts. The portion of the site proposed for development lies almost entirely within the DS District. The Project site and extensive areas surrounding the site are located within an Agricultural District pursuant to the New York Agriculture and Markets Law. However, only 7.9 acres of the site remains actively farmed. The owner of the Project site has not taken advantage of any agricultural tax exemptions for several years and has requested that the Orange County Planning Department remove the Project site from the District. The site has approximately 1,325 feet of frontage on NYS Route 94. Land use in the vicinity of the site includes commercial, residential and agricultural uses and vacant land.

The Project site is 47.529 acres in size and consists of open agricultural land, non-agricultural meadow/brush-land, freshwater wetlands and wooded uplands. The site contains four wetland areas, which make up 14.4 acres of the site. Two wood frame residences, several barns and vacant buildings from a former farm operation are grouped in the center of the Project site. Site topography is mostly gently sloping from a central ridge rising more steeply toward the rear of the property. Relatively level topography forms the center and southern edge of the property, along NYS Route 94. Nearly level areas of wetland are found on the eastern and western edges of the property. The majority of the site (45.1 acres or 95%) has slopes of under 20%; steep slopes of greater than 20% occupy approximately 2.4 acres or 5% of the site and are mostly located on the hillside in the northern portion of the site. The site drains towards a wetland/watercourse to the west and toward a wetland/watercourse to the east.

Views into the Project site occur from nearby roads. The highest and most visible elevations on the site are a wooded knoll, along with a gentle ridgeline through the center of the site where the farm buildings exist. The existing cluster of farm buildings is a visually prominent feature on the local landscape. Grassy fields are visible on the sides of the ridgeline. Shrubby lowland areas occur on the east and west sides of the site and are generally visible only from immediately adjacent portions of Route 94.

D. Detailed Development Description

The purpose of the Project is to provide a supermarket to the Warwick Route 94 corridor and to accommodate mixed commercial uses in the community with a modern facility.

The 47.5 acre tax parcel (51-1-40) tax parcel was subdivided into two lots. Lot 51-1-40.1 is in the ownership of Fairwick, LLC. Fairgrounds, LLC developed the supermarket facility on Lot 51-1-40.2. The pad building on Lot 51-1-40.2 and the water supply and wastewater treatment systems serving both lots was also developed by Fairgrounds, LLC but are under the ownership of the Town of Warwick on separate lots (51-1-40.3 for water supply and 51-1-40.4 for sewage disposal).

1. Lot 51-1-40.1 – Mixed Commercial Uses

The mixed commercial use includes three buildings which would house a bank, retail and office space consisting of 15,286 SF and 4,500 square feet of eating and drinking establishments. The three buildings are proposed to face the existing Price Chopper Supermarket and the closest one to Route 94 would be set back from the road some 225 feet. Parking areas are proposed to be

located to the rear of building number 1 and 2 and at the front and sides of proposed building number 3. Total floor area of the three buildings is proposed to be 19,786 square feet.

The proposed parking for the commercial mixed-use component is 127. The perimeters and interior of the parking and circulation areas will be landscaped in accordance with Town of Warwick Design Standards and Guidelines.

2. Lot 51-1-40.2 – Supermarket and AutoZone Building

The supermarket consists of one principal building which will house the proposed supermarket retail areas, customer services such as recyclable returns, and loading areas. The supermarket is sited to face Route 94, set back from the road some 600 feet. A 2-bay truck receiving area for the supermarket, which would also house coolers for refrigerated storage and trash compactors, is located at the rear of the building and out of sight from any view from off-site areas. Vendor receiving will also occur at the rear of the store. Employee and customer parking is proposed on the south side of the supermarket. The total floor area of the supermarket will be 56,430 sf.

A second building toward the front of Lot 2 for an AutoZone retail store has received Planning Board approval. Employee and customer parking is located on the west side of the building. The perimeter of the parking and circulation areas will be landscaped. Total floor area of the approved AutoZone building is 6,785 sf.

The Price Chopper parking lot has 284 parking spaces. Twenty-six (26) of the spaces, located on the western side of the Lot 2 area, were initially developed as lawn and considered “banked” spaces with the provision that should additional parking be needed on the site this area would be adaptable to paved parking. These 26 spaces will not be used in the development of the three buildings for the Fairgrounds #2 project.

3. Water and Sewer Systems

A non-community non-transient water supply system has been developed on the Project site to serve the proposed buildings. It includes wells, storage, treatment, pressurization and distribution facilities. A pump system pressurizes the distribution system. A 60,000 gallon water storage tank is located north of the supermarket building. Based on pump testing performed at the site, the capacity of the two existing wells far exceeds the design flow requirement for the project.

The wastewater treatment facility is a “package plant” engineered specifically for the Project. The plant design is a modular type of design that could accommodate expansion for additional users, subject to Town, County and State approvals. All buildings on the Project site will be served by the wastewater treatment plant. The sewage treatment plant is located so that it discharges (after tertiary treatment) to a subsurface effluent disposal area. Discharge is approximately 5,000 gallons per day (gpd); 3.5 gallons per minute on average, which is comparable to moderate flow from a garden hose.

A recorded unsubordinated reciprocal easement arrangement between the two lots allows for perpetual use and maintenance of the wastewater treatment and water supply systems by all on-site users. The Town of Warwick’s policy on water and sewer systems, as expressed in § 137-25 of the Town Code, is that all central water and sewer systems are to be owned and operated by the Town. The Town of Warwick was granted ownership of the water and/or sewer systems, as well as

an easement for a future surface effluent discharge point in addition to the proposed subsurface discharge point.

4. Site Access

Site access from Route 94 is centrally located at a single point. To operate at acceptable levels of service during peak hours, this new intersection has a traffic signal as well as a Route 94 eastbound left turn lane and a westbound right turn lane to accommodate traffic entering the site. The entrance drive includes one ingress lane and two egress lanes. Exiting traffic is handled in two lanes – one for left turns and one for right turns. Construction of the access was completed in 2010.

5. Landscaping and Lighting

A site landscaping plan has been designed to include tree and shrub plantings throughout the developed areas of the site that will be visible to the public. A tree and shrub planting theme is provided along the entrance driveway, in the parking lot islands and at the perimeter of parking lots throughout the Project. The plan preserves the existing character of the site's frontage along Route 94 by preserving the majority of the existing large healthy trees except in the immediate area of the Project entrance driveway. The existing copper beach tree located on the knoll near the front of the site has been preserved by locating the Project's access drive outside of the tree's "drip line" to avoid impacts to its root system.

The Project site is illuminated at night to provide pedestrian and vehicle safety throughout the developed portion of the Project site. The proposed site lighting plan consists primarily of pole mounted fixtures with fully shielded light sources to prevent off-site glare.

E. Required Permits, Approvals and Review by Other Agencies

The following agencies are Involved Agencies under SEQRA, and have approval authority over various aspects of this proposal:

Town of Warwick Planning Board: Subdivision and Site Plan Approvals, and Special Use Permit

New York State Department of Health; Orange County Department of Health: Approval of Non-community, non-transient water supply system

New York State Department of Environmental Conservation: (1) Approval of wastewater treatment facilities; (2) SWPPP conformance with SPDES General Permit No. GP-02-01.

New York State Department of Transportation: (1) Work Permit for Activities in the State Right of Way (2) Traffic Signal Permit

In addition, the Orange County Department of Planning was referred the application for review pursuant to Section 239 of the New York State General Municipal Law

II. IMPACTS, MITIGATION MEASURES AND SPECIFIC FINDINGS:

The DEIS and FEIS included an environmental evaluation of the following resource issues:

- Geology, Soils and Topography
- Terrestrial and Aquatic Ecology
- Wetlands
- Water Resources
- Land Use and Zoning
- Traffic and Transportation
- Community Services and Socioeconomics
- Air Quality
- Noise
- Cultural Resources

This Amended Findings Statement, adopted 03-16-2011 (proposed), does not include changes to impact thresholds where the impact to the resource will be less than initially estimated for the original Findings Statement adopted by the Planning Board as Lead Agency on November 15, 2006. Therefore, while there have been several modifications to the proposed development from what was initially outlined in the Findings Statement, most of the original Findings have been left unchanged.

A. Geology, Soils and Topography

Impacts to the geology, soils and topography of the Project site will occur because approximately 16.4 acres, or 34.5%, of the site must be graded to accommodate the Project. Site development and grading will mostly occur in upland areas located at the center of the Project site. Grading is necessary to create a level area for the retail buildings and parking areas of the Project. Grading is also necessary to achieve the appropriate road gradients for the entrance drive. Grading is also anticipated to occur along the site frontage at the proposed entrance to create sufficient site distance for vehicles. Additional site grading is necessary for the construction of the stormwater management facilities for the Project. The Project will result in the disturbance of approximately 0.4 acres with slopes of greater than 20%, or less than 1% of the Project site. Total earth movement to accommodate the Project will entail approximately 60,000 cubic yards of material which will be excavated and relocated to other areas on the Project site. No earth cut will need to be exported or imported to the site for Project construction. No blasting is anticipated. Overall, 26.1 acres, or 64.5%, of the site will remain undisturbed.

The soils on the Project site are common in Orange County. The on-site soils were mapped according to soil classifications in the United States Department of Agriculture Soil Conservation Service's (USDA SCS) *Soil Survey of Orange County, New York*. USDA SCS maintains a list of soils designated as "prime farmland" or "farmland of statewide importance," which was compared with the soils found on the Project site.¹ The Project site contains 15.7 acres of soils designated as "prime farmland" soils. Of these 15.7 acres, 11.9 are found in the wetlands and buffer areas on the northwest and northeast property borders, which will not be impacted by the Project. The rest of the soil types on site have been designated as soils of "statewide importance." The amount of actual land of this soil type on the Project site that is suitable for agricultural use is

¹ Prime Farmland soils, as defined by the USDA Natural Resources Conservation Service are those that have physical and chemical attributes in conjunction with a sufficiently long growing season and moisture supply necessary to produce high crop yield when treated and managed properly. "Soils of Statewide Importance" are soils other than Prime farmland soils which have a good quality combination of physical and chemical characteristics for crop production.

limited because it occurs in wetlands, on steep slopes and the existing developed area of buildings, pavement and lawns. These environmental constraints along with the development pressure in the Route 94 corridor render the site no longer suitable for agricultural use. The Project will convert the 7.9 acres of currently used agricultural soils to use as landscaped and lawn areas, stormwater management facilities and impervious surfaces within the Project.

Impacts to geology, soils and topography will be minimized by implementation of the detailed Sediment and Erosion Control Plan developed specifically for this Project. The Erosion Control Plan will provide both temporary controls during the construction period and permanent controls which will be in place and functioning at the completion of construction. During construction, the Plan will minimize the potential for soil erosion from areas exposed during construction and prevent sediment from reaching the down-gradient wetlands and watercourses through the use of silt fence barriers, sediment traps and other erosion control measures. All soil erosion and sedimentation control practices will be installed in accordance with the New York guidelines for Urban Erosion and Sediment Control, best management practices of the Orange County Soil Conservation Service and the Town of Warwick Municipal Code. The erosion and sediment control measures will be installed according to the approved construction drawings prior to any construction that will result in disturbance of soils. All erosion control measures will be maintained in good condition and left in place until permanent vegetative cover is established. The measures will be monitored during construction by the project engineer and representatives of the Town. Pursuant to the Erosion Control Plan, the area of soil disturbance will be minimized to the greatest extent practicable in accordance with the conditions of the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities. Following construction, erosion will be averted by the established vegetation and by the stormwater management facilities for the Project.

Finding: The Planning Board finds that, although there will be impacts to the geology, soils and topography that are inherent in the construction of the proposed Project, impacts from construction will be temporary and will be minimized by implementation of limitations on site disturbance and compliance with the detailed Sedimentation and Erosion Control Plan for the Project prepared in accordance with NYSDEC requirements. The removal of 3.8 acres of prime agricultural soils out of the on-site total of 15.7 acres of prime farmland soils will not create a significant impact since this site is no longer considered economically suitable for agricultural use (see also Section II.E herein).

B. Terrestrial and Aquatic Ecology

The Project site contains three different vegetative community types: (a) 28.2 acres of meadows/agricultural fields, (b) 14.4 acres of wetlands, and (c) 3.9 acres of upland mixed woodlands. Approximately 7.9 acres of the agricultural fields in the western portion of the site are currently used to grow corn and other crops. The remainder of the meadow/agricultural fields (20.3 acres) are primarily located on the eastern portion of the Project site, are not currently supporting agricultural use and are characterized by old-field meadow vegetation. The woodlands are located on a hillside in the north-central portion of the Project site. The Project site also contains a portion of a tributary to the Wawayanda Creek that flows to the north along the western side of the site, which has been identified by the NYSDEC as a Class D freshwater stream. The wetland on the eastern portion of the site is also associated with an off-site watercourse. None of these existing habitat types are unique to the area or the Project site. The Project site exists as either mostly undeveloped land or was used for agriculture for many years. The areas to be

developed are largely the agricultural areas and, therefore, their value as wildlife habitat is more limited than the undeveloped areas as a direct result of past human activities.

Bog turtle surveys were conducted for the Project site over a six-year period, including three April-May-June trapping surveys during three years, and documented in a *Bog Turtle Assessment* dated March 2005. The multiple surveys concluded that no bog turtles are present on the Project site. The on-site wetlands identified as wetlands A and D in the DEIS were determined to contain marginal bog turtle habitat but are dominated by invasive plant species. Two small wetlands areas (identified as wetlands B and C in the DEIS) located on the eastern side of the Project site are low value wetland habitats and are not vernal pools. These conclusions were reached by ERS Consultants, Inc., under the direction of biologist David Griggs, and confirmed by Dr. Michael Klemens, author of the United States Fish and Wildlife Service's ("USFWS") *Bog Turtle Recovery Plan*, and co-author of the *Southern Wallkill Biodiversity Plan*, and by Karen Schneller-Macdonald of Hickory Creek consulting for GREENPLAN, Inc. on behalf of the Town of Warwick. (FEIS p. 1-2). An April 18, 2006, letter from the USFWS to David Griggs, reiterates and does not contest the *Bog Turtle Assessment's* conclusion that there is "no potential [bog turtle] habitat in any of the project area wetlands where direct impacts could occur from project construction."

The various on-site surveys conducted by the Applicant's consultants over the past six years and documented in the DEIS and FEIS have not characterized the site as rich in biodiversity. The DEIS contains lists of various plant and wildlife species identified on the site. Wildlife on the site is comprised of species typically encountered in the woodlands, wetlands and farm fields of Orange County. During several site visits by the Applicant's ecological consultants, no threatened, endangered or rare plants were observed on the Project site. The April 18, 2006, USFWS letter to David Griggs acknowledges that "[e]xcept for the bog turtle, the potential for Indiana bats, and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under [USFWS] jurisdiction are known to exist in the vicinity of the project area." No fisheries are associated with the unnamed tributaries to which the site drains.

In response to public comment, the FEIS also included an analysis of the Project site's potential as habitat for the following species:

Upland sandpiper: While appropriate vegetative structure presently occurs on the Project site, the parcel, even in its present open, partially agricultural state, is not extensive enough to be usefully exploitable for this species for breeding purposes, although it is, and will remain, useful as a migratory stopover. This species was not reported to be found in the Warwick Block during the observations made for the 1980-1985 and 2000-2005 NYS Breeding Bird Atlas surveys.

Grasshopper sparrow: While appropriate vegetative structure presently occurs on the Project site, the parcel, even in its present open, partially agricultural state, is not extensive enough to be usefully exploitable for this species for breeding purposes, although it is, and will remain, useful as a migratory stopover. This species was not reported to be found in the Warwick Block during the observations made for the 1980-1985 and 2000-2005 NYS Breeding Bird Atlas surveys.

Horned lark: Appropriate habitat presently exists and would persist on the Project site after development. This species was not reported to be found in the Warwick Block during the observations made for the 1980-1985 and 2000-2005 NYS Breeding Bird Atlas surveys.

Cooper's hawk: Wooded nesting habitat presently exists within the Town of Warwick, though not on the Project site. Appropriate hunting habitat presently exists and would persist on the Project site after development for the Cooper's hawk to hunt the small field and forest birds and animals that constitute its prey.

Box turtle, Spotted turtle and Wood turtle: The Project site contains suitable habitat for box turtle and spotted turtle, while wood turtle habitat exists off-site in the western wetland area. Spotted turtle were observed both on and nearby the site during preparation of the SEQR documentation.

Jefferson salamander: The Project does not contain suitable habitat for this species.

None of these species were observed on site (with the exception of the spotted turtle that was observed on and off site) either visually, or audibly in the case of bird species, during the several visits by naturalists over the course of several years in more than one season.

There will be a loss of habitat at the Project site. The Project will impact 16.4 acres, or 34.5%, of the 47.5 acre Project site. The majority of impacts will be to meadow/cropland cover type, the largest cover type found on the Project site, of which 7.9 acres is currently farmed. Approximately 0.2 acres, or 5%, of the upland deciduous forest will be directly impacted by the project. Due to the presence of similar habitat on nearby properties, wildlife dispersal is expected. Wetlands B and C will also be directly impacted. Less than one-tenth of an acre of wetland will be impacted, representing less than one percent (0.7%) of the overall wetland area on the site.

The existing vegetative cover and habitat on the remaining 65.5% of the site will not be disturbed by the Project. The Project will not result in any long-term modifications to the functions of Wetlands A or D, which will not be impacted by the proposed development.

The Project has been designed to avoid wetlands and steep slopes to the greatest extent practicable. The proposed Project plan confines the developed area of the Project to the south-central portion of the site that abuts the NYS Route 94 development corridor while preserving the majority of the Project site as undisturbed habitat that connects to adjacent wetlands and upland woodland to the west, north and east. After extensive consultations with the Town's consultants, engineers, scientists and regulators, the Project plans were revised to include a comprehensive array of enhancements to further minimize or avoid impacts to wildlife, wildlife habitats, and water quality affecting those habitats.

Although the *Bog Turtle Assessment* concluded that no bog turtles are present on the Project site, and the on-site wetlands contain only marginal bog turtle habitat, modifications and design commitments have been made to the original proposed site plan which treat the adjacent wetlands as "occupied" by bog turtles. The measures were developed in consultation with Dr. Michael Klemens, and received review and approval from the USFWS as demonstrated in the April 18, 2006 USFWS letter to David Griggs.

The following is a summary description of the measures that have been incorporated into the site plan design to minimize and/or avoid impacts to terrestrial and aquatic ecology as delineated in the FEIS for the Project:

a. *Project Modifications and Design Commitments*

1. There will be no development within 100 feet of the Army Corps of Engineers (ACOE) jurisdictional wetland boundary to the west as well as the NYSDEC

regulatory wetland boundary to the east. There will be a temporary disturbance within this absolute 100 foot buffer for the ACOE wetland in the southwest corner of the site in order to remove an existing paved driveway, install a subsurface drainpipe from a stormwater basin and restore the area with transitional vegetation. There will be no permanent disturbance within this buffer.

2. Parking area pavement reduction. Lot 1 parking pavement surface has been reduced from 195,000 sf to 166,300 sf on the site plan. In addition, 1.35 acres of impervious pavement on Lot 1 has been replaced with pervious gravel surface in the vehicle storage area. Also, 4,374 sf of proposed impervious pavement in Lot 2 has been replaced with a lawn surface as “banked” parking for future use if necessary.

3. A wildlife underpass for amphibians will be constructed between the auto dealership’s vehicle storage areas to facilitate any wildlife movement between the western wetland and the wooded upland knoll.

4. The impervious driveway and land in agricultural use in the southwest corner of the property will be removed and a vegetated wetland buffer in this area will be restored.

5. Double sided high curbs are proposed around the perimeter of pavement areas to exclude any small animals from entering the paved portions of the site and funnel them through the wildlife underpass.

6. Stormwater management practices have been redesigned for the revised plan to improve stormwater treatment. The current plan includes dry vegetated swales, an organic filter system and a bio-retention basin to serve as filtration devices which will treat the stormwater collected on the Project site.

7. The sewage treatment plant has been relocated so it will discharge (after receiving tertiary treatment) into a subsurface effluent disposal area located immediately north of the proposed wastewater treatment plant. The subsurface effluent disposal area consists of an approximately 900 square foot area where wastewater will be discharged into the ground (with a 100% expansion area), located a minimum of 50 feet from a proposed stormwater “dry swale” and more than 100 feet from the NY State DEC Freshwater Wetland’s 100 foot adjacent area. A diversion swale is proposed to divert stormwater runoff around the proposed effluent disposal area. The installation of silt fencing will avoid or reduce the effects of stormwater runoff on nearby surface waters.

b. *Operational Mitigation Measures*

Various additional management measures are proposed to be implemented during the long term operation of the Project. These measures are described in detail in a letter to USFWS from ERS Consultants dated February 23, 2006, included in Appendix A of the FEIS and summarized as follows.

1. Landscape plan enhancements in wetland buffers: the landscape plan has been re-designed to provide for plantings of certain native species within the buffer areas to be established around wetlands A and D to further reduce and prevent potential indirect impacts to wetlands

2. Snow removal and storage: the Grading and Utility Plan for the Project has been revised to include designated snow storage areas and requirements for snow storage and removal which will prevent snowmelt from entering the wetlands
3. Surface water quality monitoring once every three (3) years for a nine (9) year period after construction completion.
4. Monitoring of water table and wetland vegetation for a ten (10) year period after construction completion. Monitoring of wetland buffer plantings for a five (5) year period.
5. Bog turtle monitoring in the vicinity of the Project site during construction and for a ten (10) year period after construction.

The April 18, 2006 USFWS letter to David Griggs states the following conclusions based upon the USFWS review of the Project modifications and mitigation measures:

1. While there is potential for the Indiana bat to occur in the proposed Project area, most of the proposed site disturbance will occur within open field habitats where impacts to Indiana bats are unlikely;
2. There is no potential bog turtle habitat in any of the onsite wetlands where direct effects could occur from Project construction;
3. USFWS does not anticipate adverse impacts to bog turtles in the form of harm through temporary degradation of wetland habitat;
4. The likelihood of bog turtle presence within the disturbance footprint appears low;
5. USFWS does not anticipate any impacts to bog turtles in the form of harm through long-term alteration of wetland hydrology by use of the proposed well;
6. Adverse impacts to bog turtles due to altered wetland hydrology are unlikely; and
7. Adverse impacts to bog turtles due to wetland degradation from changes in surface water quality are unlikely.

The Erosion Control Plan will also minimize or avoid impacts to soils and thus downstream surface water resources and wetlands as more fully described in Section II.A, above. The FEIS demonstrates that the proposed permanent stormwater management measures will promote the removal of pollutants to the maximum extent practicable prior to discharge. Wherever possible, such discharges will be at least 100 feet from the wetlands, thereby allowing further filtration and infiltration through the natural wetland buffers. In the single incident where such separation is not possible due to grades, the discharge from bioretention basin W3 will be filtered through a soil medium before discharge in the buffer. The stormwater management practices for the Project are based on the NYSDEC standard methods of design for compliance with Clean Water Act regulations for water quality and quantity. Treated water at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual and federal Clean Water Act standards.

The discharge from the proposed sewage treatment plant will conform with NYSDEC intermittent stream effluent limits (ISELs). These ISELs represent the highest degree of treatment required by NYSDEC and will be specified in the discharge permit issued by NYSDEC for the facility to protect wetlands and therefore downstream ecological conditions. Surface waters will be further protected through the subsurface effluent discharge point as a result in a change in the proposed project's plans.

Operation of the Country Chevy facility must comply with various industry standards as well as state and federal regulations for employee training, equipment maintenance, storage facilities and spill control procedures. Physical measures and operational practices at the proposed auto dealership, which will minimize or avoid the Project's potential impact on wetlands, water resources and the terrestrial and aquatic ecology are more fully described in Section II.D, below.

Finding: The Planning Board finds that impacts to terrestrial and aquatic ecology have been appropriately minimized or avoided by Project design; implementation of the extensive physical and operational measures for the Project; the Erosion Control Plan and stormwater management practices for the Project, the tertiary treatment of the sewage treatment plant discharge and the location of the effluent discharge to a subsurface disposal area.

C. Wetlands

The Project site contains a total of four wetland areas, which make up 14.4 acres of the site. Wetland A, located on the eastern portion of the site, is the only NYSDEC mapped wetland on site. NYSDEC mapped wetlands have a regulated 100' buffer or "adjacent area" extending from the wetland boundary. Wetland A consists of approximately 5.92 acres on site and extends off site to the east. Wetland A is the headwaters of an unnamed tributary to Wawayanda Creek. It is classified as a Class I wetland by NYSDEC. Wetland D is located in the western portion of the site, extending from NYS Route 94, along an unnamed tributary to Wawayanda Creek, to the northern boundary property. Wetland D consists of 8.06 acres on site and extends off-site to the north and west. This wetland is within the jurisdiction of the Army Corps of Engineers (ACOE).

The Project will not result in any long-term modifications to the functions of Wetlands A or D, and will have no direct impact on these wetlands. There will be no development within 100 feet of the Army Corps of Engineers (ACOE) jurisdictional wetland boundary to the west (Wetland D) as well as the NYSDEC wetland boundary to the east (Wetland A). There will be a temporary disturbance within this absolute 100 foot buffer for the ACOE wetland in the southwest corner of the site in order to remove an existing paved driveway, install a subsurface drainpipe from a stormwater basin and restore the area with buffer wetland vegetation. However, there will be no permanent disturbance within this buffer.

Wetlands B and C are small wetlands located close to Wetland A, in the eastern portion of the site. Wetland B is 0.25 acres and Wetland C is 0.14 acres. Wetlands B and C are a remnant of man-made ponds created for farming purposes. Both wetlands have minimal vegetative diversity, and thus appear to provide little habitat for wildlife. During the three years of on-site studies, neither of these wetlands was found to maintain water into the growing season and no breeding amphibians or egg masses were observed in either wetland area. In fact, these pockets have been mowed in past farming activities on the site. These wetlands also provide only minor flood storage during storm events and little erosion and sediment control.

Wetlands B and C will be directly impacted as a result of the proposed development. These impacts result from the cut and fill needed to level the development area. Approximately 2400 sf of disturbance to Wetland B and 1,700 sf of disturbance to Wetland C are proposed. Due to their small size, isolated nature and past mowing practices, Wetlands B and C provide only limited wetland functions such as groundwater discharge and wildlife habitat. These limited functions will be diminished as a result of the direct disturbance to portions of Wetlands B and C. Activities involving small amounts of wetland impact below 1/10 of an acre are authorized by the

ACOE Nationwide Permit (NWP) #39 and do not require mitigation beyond adherence to the conditions associated with NWP #39.

The DEIS and FEIS demonstrate that the Project will not cause drawdown of the surface water levels in the wetlands. Well pump testing for the Project showed no correlation between the pumping of the well and water levels in the wetlands. The “cone of depression” around the well does not affect surface waters on the Project site.

Impacts to the wetlands and their associated habitat will be minimized and/or avoided by implementation of the Erosion Control Plan for the Project, as described above in Section II.A.

The stormwater management practices for the Project are based on the NYSDEC standard methods of design for compliance with Clean Water Act regulations for water quality and quantity. The FEIS demonstrates that the proposed stormwater management measures will promote the removal of pollutants to the maximum extent practicable prior to discharge at least 100 feet from the wetlands wherever possible, thereby allowing further filtration and infiltration through the natural wetland buffers. Treated water at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual and federal Clean Water Act standards.

The proposed sewage treatment plant has been relocated to the east side of the Project site. Discharge from the proposed sewage treatment plant will conform with NYSDEC intermittent stream effluent limits (ISELs). These ISELs represent the highest degree of treatment required by NYSDEC and will be specified in the discharge permit issued by NYSDEC for the facility. The discharge will receive further filtration as it is treated in a subsurface effluent disposal area prior to being discharged to groundwater.

Finding: The Planning Board finds that impacts to wetlands on the Project site will be appropriately minimized or avoided by the Project’s design; extensive physical and operational mitigation measures for the Project; the Erosion Control Plan and stormwater management practices, and location and treatment of the sewage treatment plant discharge to a subsurface disposal area.

D. Water Resources

1. Stormwater

The Project must comply with the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities, GP-02-01. A draft Stormwater Pollution Prevention Plan (SWPPP) for the Project has been developed and included in the FEIS.

a. *Stormwater Quantity*

Development of the Project will involve the construction of approximately 7.75 acres of new impervious area (buildings, parking areas, sidewalks, etc.) on the site. Although construction of the Project will require regrading of the central portion of the site, existing drainage patterns will generally be maintained. There will not be any significant diversion of runoff from one side of the Project site to the other.

b. *Stormwater Quality*

During construction, the regrading and stockpiling of soil materials will create the potential for erosion and resulting sedimentation of downstream areas. During construction, a comprehensive Erosion Control Plan will be implemented to mitigate potential impacts to

receiving wetlands and streams. The Erosion Control Plan is more fully described in Section II.A, above.

During operation of the Project, an increase can be expected in the levels of some pollutants commonly associated with commercial land uses, including particulates, metals, nutrients and thermal impacts. Stormwater quality management facilities are part of the Project design. The stormwater management practices are based on NYSDEC standard methods of design for compliance with Clean Water Act Phase II regulations for stormwater quality and quantity. The proposed measures will promote the removal of pollutants to the maximum extent practicable, and the treated stormwater at the design discharge points will meet or exceed the most stringent standards of the NYSDEC Design Manual and Federal Clean Water Act standards.

2. Sewage Disposal Discharge

The proposed sewage treatment plant has been relocated to the east side of the Project site. Discharge from the proposed sewage treatment plant will conform with NYSDEC intermittent stream effluent limits (ISELs). These ISELs represent the highest degree of treatment required by NYSDEC and will be specified in the discharge permit issued by NYSDEC for the facility. The discharge will receive further filtration as it is treated in a subsurface effluent disposal area prior to being discharged to groundwater. The DEIS indicated that no adverse impacts to downstream water resources are anticipated to result from the proposed wastewater treatment facility and the change to a proposed subsurface effluent disposal area eliminates the surface discharge of treated effluent entirely.

3. Wetlands

The extensive physical and operational measures for the Project to minimize or avoid impacts to wetlands are described in Section II.C, above.

4. Aquifer

An *Aquifer Impact Assessment* has been prepared by the applicant and included in the FEIS as required by Section 164-47.2(D) of the Town of Warwick Zoning Code, which demonstrates that the Project includes various measures as part of its stormwater and wastewater management systems which protect surface water resources and the aquifer. The *Aquifer Impact Assessment* includes the findings of the well pump tests that demonstrate that the wells for the Project will have no adverse effect on the aquifer.

The results of the pumping test program indicate that no adverse effect on groundwater resources is expected from the Project. The pump tests reveal no hydraulic connection between the groundwater and surface water resources at the site. The *Aquifer Impact Assessment*, therefore demonstrates that no adverse impacts to the aquifer are anticipated as a result of the Project. The groundwater quality will also be protected by the provisions of the SWPPP and treatment of the wastewater treatment plant discharge. Finally, the DEIS also demonstrates that the projected water demand for the Project is far below the expected aquifer recharge and is expected to have no effect on off-site wells.

As a result of a change in the sewage treatment plant discharge point from a surface discharge to a subsurface discharge, a "Supplement to the Aquifer Impact Assessment" was required by the Planning Board. While the original Aquifer Impact Assessment analyzed the effects of pumping the groundwater wells on water quantity, it did not assess the potential impacts of the now proposed subsurface effluent discharge points on the water quality of the groundwater within the aquifer. The Planning Board's concern with an effluent discharge to the aquifer is the

potential for excessive nitrate-nitrogen concentration in the aquifer that many residents in the Town of Warwick depend upon as their source of drinking water. This is one of the reasons why this area of the Town is subject to the provisions of the Town's Aquifer Protection Overlay Zoning District. Additional analysis was conducted of the potential for there to be adverse impacts on the aquifer and this analysis was described in the "Supplement to the Aquifer Impact Assessment," prepared by Tim Miller Associates and dated January 22, 2008. According to the "Supplement" *This Supplement to the Aquifer Impact Assessment evaluates a project design change from a surface discharge from the on-site wastewater treatment plant to subsurface discharge via an infiltration system. Based upon conservative analysis, the project design change is not anticipated to have an adverse affect upon local groundwater quality, groundwater recharge, or groundwater availability to on-site or off-site wells.*

The Planning Board's engineers, TECTONIC Engineering Consultants P.C. reviewed the "Supplement" and *accepts its conclusions* in a Memorandum to the Planning Board dated January 30, 2008. The Planning Board, after conducting its own independent review of the "Supplement to the Aquifer Impact Assessment," has also concluded that the project change is not significant, will not result in a significant adverse impact on groundwater and does not require the preparation of a Supplemental Environmental Impact Statement. Furthermore, the Planning Board notes that the NY State Department of Environmental Conservation is reviewing the proposed subsurface discharge and will only issue a permit if the proposed design and operation of the sewage treatment plant meets New York State standards.

5. Finding

The Planning Board finds that impacts to water resources will be appropriately minimized or avoided by the Project's design and operation which minimizes disturbance to wetlands; extensive physical and operational mitigation measures for the Project which protect water resources; implementation of the Stormwater Prevention and Pollution Plan in accordance with the SPDES General Permit for Stormwater Discharges from Construction Activity GP-02-01, and appropriate treatment of the sewage treatment plant discharge

E. **Land Use and Zoning**

1. Conformance with the Town of Warwick Zoning Code

Since the initial Findings State was adopted, the Town Zoning Law has been amended to eliminate the former Designed Shopping Center (DS) Zoning District and replace it within the Community Business (CB) District. In addition to the CB District, the Project site is located in the OI (Office and Industrial Park), and AQ-O (Aquifer Protection Overlay) Zoning Districts in the Town of Warwick. The PriceChopper Supermarket and the AutoZone were approved and/or constructed under the DS Zoning District. All new development on the Fairgrounds #2 site are subject to the CB District regulations. The northwestern portion of the site is zoned OI but no substantial development has been proposed in this area.

The DEIS demonstrated that the Project complies with the special conditions applicable to the proposed uses on the Project site in the DS Zone. In addition, the applicant has prepared Site Plans for the Fairgrounds #2 site in accordance with the new CB Zoning District regulations, which include adherence to the Town Design Standards. The DEIS further indicates that the proposed Project is not expected to threaten the public health, safety and general welfare or the general comfort and convenience of the public and surrounding neighborhood. The proposed site

plan for the Project conforms with the area, setback and bulk control requirements of the Zoning Code. The water tank complies with all requirements of the Zoning Law.

The only portion of the Project development that is proposed to be located in the OI Zoning District is a portion of the stormwater management facilities that accompany the Lot 1 development. No building structures, parking or driveways are proposed in the OI Zoning District.

The Project also complies with the requirements of the Town of Warwick Aquifer Overlay District. An *Aquifer Impact Assessment* and *Supplement to the Aquifer Impact Assessment* have been prepared by the applicant as required by Section 164-47.2(D) of the Zoning Code, which demonstrates that the Project includes various measures as part of its stormwater and wastewater management systems which protect surface water resources and the aquifer. The *Aquifer Impact Assessment* includes the findings of the well pump tests that demonstrate that the wells for the Project will have no adverse effect on the aquifer. The report also outlines how the Project will comply with the specific areas of concern listed in the Zoning Code. The *Supplement to the Aquifer Impact Assessment* includes findings of an analysis of the sewage treatment plant discharge to a subsurface effluent disposal area.

Section 164.62.F of the Town of Warwick Zoning Code requires development proposals in the CB, DS and OI Zoning Districts to set aside a sixty foot wide right-of-way extending the entire width of the parcel frontage for dedication to the Town for construction of a marginal access road. Compliance with this requirement would result in wetland fills and will require permits from the State and/or Federal government. Therefore, the Applicant has requested a waiver from the marginal access road requirement until such time as State and/or Federal wetland or other related permits are obtained. The Town of Warwick will make application to obtain any requisite permits from the State and/or Federal governments to cross the wetland. The Warwick Zoning Law allows the Planning Board to waive the marginal access road requirement if future interconnection with adjoining parcels is provided and offered for dedication to the Town of Warwick. The Project site plan provides a sixty-foot wide right-of-way from the Project entrance drive to the western property line, with a note that such right-of-way will be offered for dedication, and a stub has been shown on the Site Plan that will extend the marginal access road up to the 100 foot buffer of the wetland to the west of the entrance drive. This alignment for a future interconnection to the west was agreed upon pursuant to the Planning Board's discussion regarding the feasibility of future interconnections on an April 6, 2005, site walk. Once such State and/or Federal wetland or other related permits are obtained, the applicant will construct the marginal access road to their western property boundary. The Planning Board determined the western interconnection alignment to be sufficient for a temporary waiver considering the Project site's environmental constraints and the need for State and/or Federal wetland or related permits. At the present time, there are no existing or proposed facilities on the adjacent parcel to the east but the parcel to the west has been proposed for the Homarc development and such development is currently being reviewed by the Planning Board under SEQR. Therefore, the Project merits a waiver from the requirement for a marginal access road until such time as the Town obtains a State and/or Federal wetland permit or other related permits for the wetland crossings.

2. Conformance with the Town of Warwick Subdivision Regulations

The development site is comprised of a single 47.5 acre tax parcel (51-1-40). The automobile dealership will be located on proposed Lot 1 (22.301 acres), and the supermarket and pad building will be located on proposed Lot 2 (25.228 acres). The DEIS demonstrates that the proposed

Project has been designed in full compliance with all applicable requirements of the Town of Warwick Subdivision Regulations.

3. Conformance with the Town of Warwick Comprehensive Plan

The Town of Warwick Comprehensive Plan recommends focusing retail activity in the DS zone. The proposed Project furthers this objective under the new CB District with the addition of mixed uses.

The Town of Warwick Comprehensive Plan further recommends that such development should provide significant natural buffering between the development and the highway. It also recommends consideration of an “alternative plaza design” for commercial developments in the Town which would place parking in the rear of the proposed buildings, with landscaping and open space dominating the site to enhance the overall site design. The Town of Warwick Comprehensive Plan also recommends designation of the portion of Route 94 on which the Project site is located as a Scenic Road Corridor and calls for increased setbacks and natural screening for new development in such corridors.

The applicant has committed to and the Planning Board provided an approval for the Fairgrounds #1 based upon providing landscaping around the south and east elevations of the AutoZone building and along the southwesterly portion of the site to soften the views from Route 94. The trees proposed at this location include Shadblow Serviceberry, White Pine, American Beech, White Oak, and Scarlet Oak. The Planning Board remains responsible for determining the adequacy of additional landscaping along Route 94 as outlined in §§ 164-46.H(8) and 164-43.2 of the Zoning Law.

4. Conformance with the Orange County Comprehensive Plan

The proposed project will result in the loss of agricultural soils and the conversion of farmland to commercial use. While this is not consistent with the general County goal of farmland preservation, in supporting commercial use, the proposed Project conforms to the specific land use plan recommended in the Orange County Comprehensive Plan for the Project site. The environmental constraints along with the development pressure in the Route 94 corridor render the site no longer suitable for agricultural use. The Project site is located in a “priority growth area” under the Plan. Priority growth areas are described by the Plan as “general areas of preference for future development to maximize efficiency of infrastructure and services and to minimize open space losses.” The Project is sited at a location that is more suitable for commercial use, from a transportation and land use perspective, than farmland.

5. Agricultural Use of the Property

The Project site and surrounding areas are located within an Agricultural District pursuant to the New York Agriculture and Markets Law. However, the agricultural use of the property has declined significantly over the years. Only 7.9 acres of the site are currently in use as crop land. This small portion is rented on a short term basis. The owner of the Project site has not taken advantage of any agricultural tax exemptions for several years and has requested that the Orange County Planning Department remove the Project site from the District.

The soils on the Project site are common in Orange County. The Project site contains 15.7 acres of soils designated as “prime farmland” soils. Of these 15.7 acres, 11.9 are found in the wetlands and buffer areas on the northwest and northeast property borders, which will not be impacted by the Project. The rest of the soil types on site have been designated as soils of “statewide importance.” (See footnote 1 on page 7.) The Project will convert 7.9 acres of currently used agricultural soils to use as landscaped and lawn areas, stormwater management facilities and

impervious surfaces within the Project. The amount of actual land containing soils of “statewide importance” on the Project site, that is suitable for agricultural use, is limited because it occurs in wetlands, on steep slopes and the existing developed area of buildings, pavement and lawns. These environmental constraints along with the development pressure in the Route 94 corridor render the site no longer suitable for agricultural use. This is consistent with the Town of Warwick Community Preservation Project Plan (released July 27, 2006), which acknowledges the importance of the site for protection of its freshwater wetlands and biodiversity resources but does not recommend protection for agricultural purposes under the Town of Warwick Purchase of Developments Rights program.

6. Compatibility of the Project with Surrounding Land Uses

The proposed Project will replace existing vacant and agricultural land with commercial development in three separate buildings, with associated parking and utilities. The proposed Project consisting of a supermarket, automobile dealership and a bank or other retail/service use, is permitted by and consistent with the current zoning of the site. The Project is expected to be compatible with adjacent and nearby land uses. Similar uses are located opposite and south of the Project site in Route 94. The Project’s building design, siting and landscaping will provide separation and screening from Route 94 and surrounding properties.

Finding: The Project site is specifically zoned for the proposed commercial and retail use, and is located in a “priority growth area” under the County Comprehensive Plan. Therefore, the Project conforms to the land use plans recommended by both the Town of Warwick and Orange County.

F. Traffic and Transportation

The Project site is located on the north side of NYS Route 94, approximately 1 mile southwest of the Village of Warwick. Access to the Project site is currently via a driveway entering the center of the site from Route 94. The Project access will be in the same location. No road access other than from Route 94 is available to the property.

A *Traffic Impact Study* for the Fairgrounds Project was conducted, which assessed the effects associated with the development of this Project along with the effects of three other identified development projects in the Town of Warwick and background traffic increases. This study, dated May 2004, was conducted by John Collins Engineers, P.C.

The *Traffic Impact Study* evaluated existing and future traffic conditions at six existing intersections located in proximity to the Project, in addition to the Project site access. The following intersections were included in the study:

- NYS Route 94 and Sanfordville Road/Pennings Lane – unsignalized
- NYS Route 94 and Warwick Turnpike (CR 21) – unsignalized
- NYS Route 94 and the ShopRite Driveway
- NYS Route 94 and Pelton Road (CR 1A) – unsignalized
- NYS Route 94 and Hathorn Road (Both legs) – unsignalized

- NYS Route 94 and site access – to be signalized
- NYS Route 94 and Route 17A – signalized

No pedestrian or bicycle traffic activity was observed along NYS Route 94 near the Project site. There are no sidewalks, worn paths or paved shoulders in this area.

The *Traffic Impact Study* assessed future conditions projected to occur after construction of the Project. The Project can be expected to generate approximately 621 new vehicular trips in the weekday PM hour, and 628 new vehicular trips in the Saturday peak hour. A No Build traffic condition, representing the traffic conditions in the year that the Project is projected to be entirely built (but without Project-generated traffic) was established. The projected build year is 2007. The No Build condition was established by combining a 2% per year increase in traffic volumes from 2004 to 2007 with peak hour traffic from other proposed developments in the Town of Warwick.² The Project traffic was then added to the No Build traffic condition to produce the Build traffic condition. Then a capacity analysis for each of the identified area intersections under the Build condition was carried out.

The capacity analyses in the *Traffic Impact Study* for the Project indicated that the NYS Route 94/Pelton Road (CR1A) unsignalized intersection would continue to operate at poor levels of service in the future No Build and Build conditions and will require improvements to serve future traffic volumes, regardless of the Fairgrounds Project.³

The intersection of the proposed Project access and NYS Route 94 was also analyzed. The analysis indicates the southbound lane would operate at LOS “F”, an unacceptable condition. The *Traffic Impact Study* therefore recommends a traffic signal and other provisions at the Project access.

NYS Route 94/Pelton Road (CR1A): Installation of a traffic signal at the intersection of Route 94 and Pelton Road (CR 1A) is recommended by the *Traffic Impact Study* to bring the operating conditions to a LOS “C” or better for all approaches. The Town of Warwick has established a fund for installation of this traffic signal. The amount of contribution to such fund required for the Fairgrounds project will be established at the time of final Project approval based on the amount of traffic generated by the Project as a percentage of the existing traffic volumes on the local road network. This signal is approved and currently being installed.

NYS Route 94/Fairgrounds Project Access Road: To operate at an acceptable LOS of “C” or better during the peak hours, the new intersection created by the Project access road will require signal control as well as an eastbound left hand turn lane and a westbound right turn lane to accommodate traffic entering the site. Conceptual approval of the proposed access was provided by the New York State Department of Transportation (NYSDOT) in its letter dated August 30, 2006, included in Appendix A of the FEIS. Installation of the signal and turn lanes is subject to the NYSDOT Highway Work Permit process. The Project Sponsor will provide the mitigation measures at the Project entrance at its sole expense.

The *Traffic Impact Study* further indicates that with the signalization at the Project access and the Intersection of NYS Route 94 and Pelton Road (CR 1A), the other unsignalized

² The developments which were considered were:

- Sullivan Commercial development
- BCM Subdivision
- Gables Subdivision

³ This intersection currently operates at LOS “E” and “F” during the PM peak hour and Saturday peak hour.

intersections in the area will benefit from the increase in gaps in the traffic stream which will reduce the delays experienced at these intersections.

The *Traffic Impact Study* concludes that the traffic expected from the Project can be accommodated on the area street network with implementation of the identified mitigation measures.

3. Finding

The Planning Board finds that with implementation of the highway improvements identified as mitigation measures in the *Traffic Impact Study*, the traffic impacts from the Project will be mitigated to the maximum extent practicable.

G. **Community Services and Socioeconomics**

1. Taxes

Tax revenues to the various taxing jurisdictions in which the Project is located will take the form of increased property tax and sales tax revenues. The additional permanent jobs that are added to the local economy by the Project will also add to the income tax revenues of the State and Federal governments.

The DEIS calculates a total projected increase in property taxes of \$276,907 above existing site-generated revenues, a tax increase from \$29,996 to \$306,903. The Project will provide significant benefits to the Warwick School District by adding a projected \$226,415 in new property tax revenue without creating any burden on school services. The projected revenues presented in the DEIS are based on current tax rates. With no changes in assessments, these rates are likely to increase over time.

Future sales taxes generated by the Project's retail centers are expected to be on the order of magnitude of \$3.86 million, which will be shared by the State of New York, Orange County and the Town of Warwick. Annual sales tax revenues to the Town of Warwick are projected to be \$40,279 and \$1,247,686 to Orange County.

As described below, no significant adverse impacts are anticipated as a result of the Project related to community service providers. Incremental costs associated with additional calls to these service providers would be expected to be offset by the taxes generated by the Project. The Project is not expected to result in adverse population or socioeconomic impacts. Estimated local property taxes and sales tax revenues will result in fiscal benefits for local taxing jurisdictions. No significant adverse impacts to community services or the Town or Village tax base are anticipated. Therefore, no mitigation measures are proposed related to taxes and fiscal conditions.

2. Market Conditions

A market study was completed by the Project Applicant's consultants to gauge the extent to which additional supermarket floor area at the Project site could be supported within the Town of Warwick. This analysis was conducted for the purposes of the EIS using commercially and publicly available data and does not include proprietary information. Based on the positive results of its own proprietary market study, Hannaford has entered into a long-term lease for its operation at the site.

The analyses conclude that the Town of Warwick and its environs have the ability to support the additional proposed supermarket. The FEIS demonstrates that the Town of Warwick and its environs houses a growing and comparatively affluent population that, based on the Trade

Area analysis in the DEIS, is expected to provide adequate customer base to support the proposed Hannaford supermarket. According to the DEIS analysis, the trade area food stores, including those in the Village of Warwick, are not expected to be significantly impacted by competition from the proposed supermarket due to the area's substantial untapped demand for such facilities, growing population base and relatively high buying power.

Country Chevy is an existing auto dealership which will move from its facility in the Village of Warwick to the Project site. The DEIS provides a regional example demonstrating that successful re-use of the Village facility can be expected once Country Chevy moves to the Project site. Therefore, no long-term erosion of the Village of Warwick tax base is anticipated as a result of the relocation of County Chevy.

3. Employment

a. *Short-term Employment*

The Project is expected to directly and indirectly generate 41 person-years of employment in the form of short term employment.

b. *Long-Term Employment*

The supermarket is projected to provide 55 full time and 120 part time jobs. Assuming 2.5 employees per 1000 sf of floor area, the AutoZone building and other proposed uses on the Fairgrounds #2 site can be expected to provide approximately 50 additional jobs.

No adverse impacts on area employment are anticipated. Therefore, no employment-related mitigation measures are proposed for the Project.

4. Community Services

a. *Police Protection*

The Project is served by the Town of Warwick police. The Town of Warwick Department of Police has indicated that the Department has capacity to deliver police protection services to the Project. The Project will provide an east-bound left hand turn lane into the Project and regrading for sight distance improvement at the Project access site as recommended by the Town of Warwick Police Chief.

b. *Fire Protection*

The Project site is in the Warwick Fire District. The proposed Project has been designed to comply with all applicable codes and regulations related to fire prevention and protection. Assistant Fire Chief Frank Corkum Jr. indicated that the Warwick Fire District has adequate resources to provide fire protection for the Project.

c. *Ambulance Services*

Emergency medical care and ambulance services are provided in the Project site area by the Warwick Community Ambulance Service, Inc. In a letter dated June 25, 2004, Captain Frank Cassanite, Jr. of the Warwick Community Ambulance Service indicated that it will be able to provide emergency services to the Project.

The DEIS demonstrates that any incremental costs associated with additional calls to these service providers would be expected to be offset by the taxes generated by the Project. Anticipated tax revenues in excess of \$300,000 per year include \$5,698 in revenues for police, \$3,316 in revenues for fire protection and \$1,757 in revenues for emergency medical services.

5. Solid Waste

The supermarket generates approximately nine tons of solid waste (excluding corrugated cardboard) per week, or between 30-40 tons per month. This waste will be compacted and stored on-site prior to disposal approximately 5 times each month. Corrugated cardboard will be baled for recycling, and stored on site prior to disposal three times each month.

The other buildings on the site can be expected to generate solid waste at an overall rate of 0.001 tons per day per employee. With a total of 50 employees expected to work at full buildout, there would be approximately 18.25 tons of solid waste per year.

The businesses in the Project will make appropriate arrangements with private carters for solid waste disposal. Dumpster and solid waste storage areas for the Project will be sited and screened to avoid visual impacts.

6. Finding

Given the substantial generation of tax revenues which will more than offset anticipated Town costs and the low service demands associated with the proposed uses of the property, the Planning Board finds the Project will not cause any adverse impacts to community services or socioeconomics.

H. Air Quality

The Project site is located in the NYSDEC Region 3, Hudson Valley Air Quality Control Region. The existing air quality in the vicinity of the Project site is acceptable and poses no known threat to the health or welfare of the general public. There are no known major sources of air pollution emissions in the vicinity of the Project site.

1. Construction Related Impacts

Temporary impacts on local air quality are expected to occur during the construction of the Project due to mobile source emissions of construction vehicles and equipment. Construction activities on the Project site are expected to result in the release of fugitive or airborne dust.

Construction activities will be limited to a specific construction schedule. Construction equipment will be maintained in proper operating condition. In addition, dust control measures will be provided as needed throughout the construction period, including (a) minimizing the extent of soil that is left unvegetated at any one time; (b) the use of fast-germinating seed or other temporary cover on exposed soil surfaces; (c) spraying water on exposed areas used for construction traffic when needed; and (d) covering construction vehicles used to transport soil or demolition debris.

2. Vehicle Related Impacts

Carbon Monoxide (CO) is the primary pollutant studied at the local scale for impacts of vehicle emissions. The Air Quality study for the Project identified no significant Project impacts with respect to CO. Based upon the Traffic Impact Study for the Project, the intersection of NYS Route 94 and Pelton Road (CR1A) was determined to be the critical location in terms of its potential to affect air quality by Project related traffic. Results from the air quality prediction model for emissions at this intersection indicate that the highest potential concentration of CO would not exceed the National Ambient Air Quality Standard (NAAQS) of 9.0 ppm. Therefore, the proposed Project will not result in any exceedences of the NAAQS for CO, and the Project does not have the potential for long-term adverse impacts related to air quality. As no ambient air quality impacts are anticipated as a result of the vehicle traffic generated by the Project when it is built and occupied, no mitigation is proposed.

3. Finding

The Planning Board finds that any impacts to air quality from construction activities will be temporary and intermittent. Mitigation measures have been identified which will minimize those temporary impacts to the maximum extent practicable. No ambient air quality impacts are anticipated as a result of the vehicle traffic generated by the Project when it is built and occupied.

I. **Noise**

1. Construction Noise

Ambient daytime noise levels will increase in the vicinity of the Project site during Project construction. The level of impacts from construction noise sources depends on the type and number of pieces of construction equipment being operated, as well as the distance from the construction site. The noisiest period of construction will occur as site grading is conducted, and in the fourth and fifth months of construction as concrete and building materials are trucked to the site. Noise levels at the site property line are projected to range between 65 and 90 dBA, depending on the location of construction equipment at any given time. It is anticipated that existing residences on Wilder Drive will experience temporary elevated noise levels at occasional periods during construction of the Project.

Mitigation of construction-related impacts include the short construction period and limitation of construction to daytime hours.

2. Operational Noise

Off site noise will increase slightly with the addition of traffic to local roads due to the Project as well as normal traffic growth. Traffic entering and exiting the site via Route 94 will cause the greatest impact. Based on Projected traffic increases, noise on Route 94 is expected to increase 1.9 dBA, a barely perceptible change in noise level.

Normal operations at the Project site will create noise primarily from the rooftop HVAC equipment on each building, from customer car traffic on the site, and from truck circulation and loading on the site. Of these, truck traffic would create the greatest noise. The Town of Warwick Zoning Code provides a standard for noise that applies to any land use in the Town. Upon completion and occupation of the Project, it will be subject to compliance with the Town standards. The DEIS demonstrates that the noise from car and truck traffic generated by the Project is projected to be significantly lower than the lowest noise standard in the Town's regulation. Therefore, the normal operations on the Project site are not expected to increase the ambient noise levels in excess of the Town's noise standard thresholds at the property line.

Site characteristics and building siting will further minimize or avoid noise impacts. The topography of the site rises significantly from the loading area at the back of the supermarket toward the eastern property line with a setback of 285 feet or greater. More than 170 feet separates the waste collection of the auto dealership from the property line on the west side of the site. No residential use is located immediately to the north or west of the Project site. The closest residential use is located south of the Project site, more than 800 feet from the supermarket loading area, which will be effectively screened from noise impacts by the proposed building in between. The residential use is more than 475 feet from the Fairgrounds #2 waste collection area, and thus buffered from the occasional noise at this location.

3. Finding

The Planning Board finds that any noise impacts from construction activities will be temporary and intermittent. Limitation of construction activities to daytime hours will minimize those temporary impacts. The permanent use and operation of the Project site will not result in noise significantly above current ambient levels.

J. Cultural Resources

1. Historical and Archeological Resources

Phase 1A, 1B and II site assessments were carried out for the Project site. The cultural resources investigator concluded that the proposed construction on the Project site would have no effect on potentially significant cultural resources and no further historical, architectural or archaeological investigation is recommended.

An assessment of the potential cultural resources significance of the house and other buildings that stand on the Project site was also conducted. The house, known as the Blain-Raynor-Miller house, was reported to retain some evidence of its eighteenth century origins, but has undergone several additions and alterations and extensive updating and enlargement. The house as it stands today presents an early twentieth century vernacular residential structure. The investigation concludes that the buildings have lost almost all of their physical connection with the first 150 years of their occupation. Therefore, the property and the main house in particular do not meet historical or architectural significance criteria for inclusion in the State or National Historic Registers. The assessment of the Blain-Raynor-Miller house is included in the DEIS and was reviewed by OPRHP, which determined that the house and its associated outbuildings do not meet eligibility criteria.

As the site of the existing buildings provides the best location for safe site ingress and egress, and the farmhouse cannot be moved and renovated for economic re-use within the Project, the current Project plan calls for its removal.

As an accommodation in response to a comment received on the DEIS which suggested moving the farmhouse, the Applicant has made inquiries into what could be done, and there appear to be two opportunities. The owner of the adjoining dairy farm has been contacted, and if moving the structure is feasible, has agreed to allow the physical movement of the farmhouse onto his property for preservation. If moving the entire structure is not found to be feasible, particular features of the farmhouse such as specific doors and woodwork can be removed and relocated to a museum setting selected by the Town Historical Society.

2. Visual Resources

A visual assessment in accordance with NYSDEC guidelines was carried out for the Project site. A visual assessment is an analytical technique that determines the viewshed of a particular property, identifies aesthetic resources within the viewshed, determines the potential impacts of the development of that property on aesthetic resources, and identifies mitigation strategies to avoid visual impacts.

Field surveys identified the actual viewshed, or specific publicly accessible locations in the site vicinity, from which the site and potentially the Project would be visible. The actual viewshed of the Project site is limited to the roadway about 1,000 feet immediately to the east of the property on Route 94, a location at the residential cul-de-sac on Wilder Circle some 1,500 feet to the southeast, 0.5 miles to the south on CR 21 and 1,000 feet west of the property on Route 94. Portions of the Project site are visible from the shopping center on the opposite side of Route 94

and from the Warwick Drive-In Theater on CR 21. No views of the site were found to exist from points to the north or northwest of the site due to intervening dense vegetation and topography.

Construction of the Project will convert existing meadow, crop land and a small portion of woods located in the center of the Project site to developed land, thus creating a change in the visual character of the site area. Sight line profile drawings were constructed to illustrate the potential visibility of the Project, including all buildings and the proposed water tower, from points in the actual viewshed.

The Town of Warwick Comprehensive Plan designates ridgelines as a scenic resource to be protected and the Route 94 corridor as a scenic road. The proposed Project will occupy a position in the landscape that is below the ridgeline immediately to the north. The Project plan reflects a sensitivity toward preserving the scenic nature of the roadway corridor. Provisions to preserve the visual character of the site are part of the Project design. The selection of the building architecture in this Project is intended to complement the area. The proposed building architecture and the building siting is intended to appeal to the openness of the Project site while mirroring some of the character of the local area. The design of the structures, as well as their physical siting, the Project access, and development setbacks have been considered to minimize visual sensitivity from off-site locations. A site landscaping plan has been designed that includes tree and shrub plantings throughout the developed areas of the site that will be visible to the public. The landscape plan preserves the existing character of the site frontage along Route 94 by preserving the majority of the existing large, healthy trees except in the immediate area of the entrance driveway. The site frontage between Route 94 and the new pavement areas will be maintained as meadow. Other perimeter areas disturbed by grading will be revegetated. Existing landscape vegetation outside the disturbed areas will be preserved.

The Project's new structures will use architectural styles that are in compliance with the Town of Warwick Design Standards. The Town ARB has offered helpful commentary on the design of the buildings including compliance with the Town Design Guidelines and Town Design Standards.

The lighting design (luminaire height, pole spacing and light type - fully shielded box mounted structures) allows sufficient illumination at night to provide pedestrian and vehicle safety throughout the developed portion of the Project site while minimizing light spillage and shielding any glare from any off-site viewer location. The Lighting Plan for the Project has previously demonstrated that no light trespass from the Project will exceed 0.01 footcandles at the property line, except at the site access. The standard Town lighting note has been placed on the Site Plans which will ensure continuing compliance with Town lighting requirements.

3. Finding

The Planning Board finds that no significant historical, architectural or other cultural resources have been identified on the Project site. The Planning Board also finds that the visual impacts of the Project will be minimized by utilizing architectural styles that are in keeping with the community; incorporation of significant landscaping and buffering, and utilization of appropriately styled and shielded lighting.

III. ALTERNATIVES

Five alternatives to the proposed action were studied in the EIS:

- No Action Alternative
- Alternative 1 – Vernacular Architecture
- Alternative 2 – Alternative Development Plan: Buildings Close to Road with Parking Behind
- Alternative 3 – Use of Existing Farm Buildings
- Alternative 4 – Alternate to Wetland Loss and Mitigation

A. No Action Alternative

The No Action alternative is represented by the existing conditions on the Project site. Under this alternative, the site would remain agricultural land, non-agricultural meadow/brushland, freshwater wetlands and wooded uplands, with several farm buildings. With no improvements to the site, the new commercial and retail facilities associated with The Fairgrounds Project would not occur. The No Action Alternative would avoid those adverse impacts that could result from the proposed Project. However, it would forego the substantial economic benefits of the Project as well as the desired land use policy to establish mixed-use commercial and retail development in the DS and OI Zoning Districts as per the Town of Warwick Comprehensive Plan. Potential tax revenues resulting from the development as allowed by current zoning would not be realized by the Town, County or School District. New sources of sales tax revenue would also not be realized. Moreover, this alternative does not meet the objectives and capabilities of the Project sponsor to generate new and enhance existing economic activity in the Town.

B. Alternative 1 – Vernacular Architecture

Given the architectural designs planned for the Project, the proposed buildings are not anticipated to create a stark contrast to the visual character of other development in the area, and the landscape treatment will provide a visual transition to the surrounding landscape. An alternative architectural style would not affect any environmental aspect other than aesthetics.

C. Alternative 2 - Alternative Development Plan: Buildings Close to Road with Parking Behind

This alternative presents an alternative site plan in strict conformance with the recommendations of the Town Comprehensive Plan and Design Guidelines. The alternative plan sites the 56,000 sf supermarket and 22,270 sf dealership at the front of the Project site near Route 94. The existing house site is shown as re-used for additional retail space on the existing footprint. Most of the parking in this alternative is placed behind the buildings, with landscape buffering and retaining wall screening the views from Route 94.

Given various circumstances, including the irregular site configuration, the narrow site frontage that is unconstrained by wetlands, site topography and the siting requirements of the Project facilities, this alternative does not meet the Applicant's objective to develop what it believes to be an economically viable plan. To locate the supermarket so close to Route 94, it is turned to face the rear of the parcel because such a facility requires direct pedestrian access between the main door and the parking field. This places the loading/service area toward the road, requiring significant screening in the form of a tall retaining wall and additional landscaping. This orientation of the supermarket does not present an economically viable plan.

Under this alternative, the general intensity of the use of the site would be the same as the proposed Project, and it would generate similar traffic, noise and use of community resources. However, under this alternative, impacts to on-site wetlands would be greater than the proposed Project plan as a result of locating the buildings toward the front of the site, necessitating wetland mitigation areas to offset the effects of wetland buffer disturbance. Moreover, the overall visual prominence of the Project would be increased since the buildings would be closer to Route 94. Finally, placing a building on the footprint of the existing farmhouse would require location of the Project entrance roadway east of the high point on Route 94 and would not take advantage of the best lines of sight for the entrance driveway.

D. Alternative 3 – Use of Existing Farm Buildings

There are several farm buildings located at the center portion of the Project site. The only existing building that is considered to be usable and safe in its present condition is the main house at the front of the property. This building lacks significant historical value due to significant remodeling and expansion since it was built, and is located at the optimal location for a safe access road into the property. Therefore, re-use of the existing buildings is not feasible and they are proposed to be removed.

E. Alternative 4 – Alternate to Wetland Loss and Mitigation

The Applicant submitted a site plan to the Town in 1999 proposing a dealership, supermarket and other retail use on the Project site which necessitated the elimination of approximately 0.4 acres of wetlands and proposed three areas of wetland mitigation to compensate for the loss. The current proposed plan for the Project was designed to avoid this impact and is proposed as the preferred alternative to this wetland loss. The Project proposes a reduced area of wetland disturbance of less than 0.1 acre which is permitted under federal regulations with no mitigation requirement other than adherence to the specific conditions associated with NWP #39.

IV. CONSISTENCY WITH DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS

The Planning Board has determined that the Draft EIS and Final EIS documents and the public hearing on the Draft EIS are sufficient to inform the public of all environmental aspects of the proposed project's effects. The Planning Board has also determined that the detailed mitigation measures specified in the Draft and Final EIS's as well as the proposed subdivision plans are adequate to avoid or minimize environmental impacts of the project. All such measures are incorporated by reference in this Findings Statement as if they were enunciated herein.

V. CERTIFICATION OF FINDINGS TO APPROVE

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions and specific findings relied upon to meet the requirements of 6 N.Y.C.R.R. Part 617, this Statement of Findings certifies that:

1. The requirements of 6 N.Y.C.R.R. Part 617 have been met;

2. Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement; and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Mr. Showalter makes a motion on the Fairwick, LLC./Fairgrounds #2 application, granting Site Plan Approval and Special Use Permit for the construction and use of commercial/retail facilities totaling 19,786 square feet in three buildings, entitled "**Fairgrounds #2**", situated on tax parcel S 51 B 1 L 40.1; project located on the northern side of State Highway 94 approximately 1,000 feet east of Orange County Route 21, in the DS/OI zones, of the Town of Warwick, County of Orange, State of New York. An Amended Findings Statement was adopted on April 6, 2011. Approval is granted subject to the following conditions:

1. Checklist (L) 9: Show all easements, deed restrictions, and covenants shown on the plans.
2. According to §164-43.4.G, lighting levels around an ATM must be in accordance with NYS ATM Safety Act. The lighting levels around the proposed ATM must be modified to reflect the appropriate levels.
3. It has been noted that the entire site's lighting will be reduced by 20% overnight. The method to accomplish this should be explained within the drawing set, including which lights will be effected, if dimming ballasts are necessary, and if lights need to be turned off. Provide nighttime lighting levels to show security lighting levels.
4. The language on Sheet 1 (on the site plan itself) states that the Marginal Access is to be dedicated... the language should be changed to the satisfaction of the planning board attorney.
5. A complete signage and striping plan (with appropriate details, i.e., Do Not Enter, One Way, etc.) should be submitted for the project site. Details have been added; overall plan needs to be shown.
6. Add a note to the plan: If the proposed uses for the remaining buildings are not known at the time of site plan approval for Fairgrounds #2, then the Applicant will have to make an application for an amended site plan approval if the proposed use requires substantial changes to the approved building. All other buildings, either previously approved or still conceptual must be shown. Prior to each approval the Applicant shall demonstrate that the parking space requirements, stormwater (in accordance with the Town Code requirements and including permeable pavers), water, and sewage needs have been provided.
7. OCDOH approval of modified water supply permit (approved design flow of 5,000 gpd proposed to be modified to 10,000 gpd) – OCDOH approval granted 03/22/11.
8. NYSDEC approval of modified sewerage discharge system (approved design flow of 5,000 gpd proposed to the modified to 10,000 gpd).
9. Possible re-location of sanitary sewer manhole to minimize disturbance for future connections to sanitary system.
10. Repair of infiltration problem at existing sewer facility (e.g., groundwater infiltration at pipe penetrations in the comminutor tank and possibly other tanks).

11. Sheet 1 Notes 9 and 17 seem to contradict each other; it is the Town's understanding that the Applicant has agreed to construct the marginal access road if the Town obtains the appropriate permits. Revise to Planning Board Attorney's specifications.
12. A note should be added to the plans stating that the Applicant will construct the Marginal Access Road prior to the Building Department issuing the second Certificate of Occupancy for Fairgrounds #2 or at the discretion of the Town Board.
13. The Applicant's wetland specialist should prepare a letter to the Planning Board stating that a wetland delineation was completed, including the date of delineation, who did the delineation, and appropriate data sheets.
14. The width of the proposed Marginal Access Road is shown to be 24-ft wide; a detail should be added to the plan showing the cross section of pavement proposed.
15. The 911 addresses should be shown on the plan.
16. As a conditional of final site plan approval for Fairgrounds #2, a three-ring binder with all color, texture, roofing samples, etc. shall be submitted and retained with the Building Department after final approval is granted. Architectural detail is to be finalized to the Town Planner's specifications.
17. Payment Of All Fees.
18. Payment of all bonds (landscaping, performance, construction trailer removal bond, construction inspection fees for landscaping and performance, and traffic mitigation fees).

Seconded by Mr. McConnell. Motion carried; 5-Ayes.

Dave Getz: Thank you.

Adrian Goddard: Thank you.

Town of Warwick/Fairwick, LLC./Fairgrounds, LLC.

Application for Final Approval of a proposed Lot Line change, situated on tax parcels S 51 B 1 L 40.1, 40.2, 40.3, and 40.4; parcels located on the northern side of State Highway 94 approximately 1,000 feet east of Orange County Route 21, in the CB zone, of the Town of Warwick, County of Orange, State of New York.

Representing the applicant: John McGloin, PLS. Dave Getz from Lehman & Getz Engineering. Adrian Goddard from Goddard & Associates, Applicant.

Mr. Astorino: John, is this what you had brought up at the Work Session?

Mr. Bollenbach: Yes. There are two municipal lots. Lot 3 has the septic facilities and water tank on the lot. Lot 4 has the well site on it. They are two separate lots. What we are doing is merging these two lots into one lot and adding some contiguous property to make it a little bit larger area so that it would be easier to access and maintain the facilities.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments – pending
4. Architectural Review Board comments – pending
5. OC Planning Department – pending submittal
6. This is a lot line change with no construction proposed at this time. It is therefore concluded that there will be no increase in water usage, sewage usage, traffic, no additional access if necessary at this time, and no ground disturbance (no erosion control necessary at this time) as a result of this lot line change.
7. All property owners to be listed and sign the Application Forms.
8. Provide deeds for lot line change, including an overall description of the newly created lot 51-1-40.3.
9. Surveyor to certify that iron rods have been set at all property corners.
10. Payment of all fees.

The following comment submitted by the Conservation Board:

Town of Warwick/Fairwick, LLC./Fairgrounds, LLC. – None submitted.

The following comment submitted by the ARB:

Town of Warwick/Fairwick, LLC./Fairgrounds, LLC. – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: We had just done SEQR. We had just adopted the amended Findings Statement. Because the original subdivision was covered under the Findings Statement, there is no need to do any further SEQR action.

Comment #2: Applicant to discuss project.

Mr. Astorino: John, had just explained what the project is about.

Comment #3: Conservation Board comments – pending

Comment #4: Architectural Review Board comments – pending

Comment #5: OC Planning Department – pending submittal

Comment #6: This is a lot line change with no construction proposed at this time. It is therefore concluded that there will be no increase in water usage, sewage usage, traffic, no additional access it necessary at this time, and no ground disturbance (no erosion control necessary at this time) as a result of this lot line change.

Comment #7: All property owners to be listed and sign the Application Forms.

John McGloin: We could do that.

Comment #8: Provide deeds for lot line change, including an overall description of the newly created lot 51-1-40.3.

Mr. Bollenbach: That would be the deeds and title. We will need to add a comment #11. Comment #11, provide access easement to the municipal parcel.

Comment #9: Surveyor to certify that iron rods have been set at all property corners.

John McGloin: I was wondering if we could modify that. I spoke to Ed Butler at the first submission of this. There are pins that can't be set. They are going up and down in the middle of the road. My suggestion would be that surveyor to certify that iron rods have been set as may be required.

Mr. Bollenbach: Just say on that comment to the Town Engineer's specifications.

Comment #10: Payment of all fees.

Mr. Astorino: Do any Board members have any comments?

John McGloin: I would like to ask the Board to waive the final public hearing on this project. There is no construction proposed. It is just modification of a lot line.

Mr. Showalter makes a motion to waive the public hearing.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Mr. Showalter makes a motion on the Town of Warwick/Fairwick, LLC./ Fairgrounds, LLC., application granting Final Approval for a proposed Lot Line Change, situated on tax parcels S 51 B 1 L 40.1, 40.2, 40.3, & 40.4; parcels located on the northern side of State Highway 94 approximately 1,000 feet east of Orange County Route 21, in the CB zone, of the Town of Warwick, County of Orange, State of New York. Approval is granted subject to the following conditions:

1. All property owners to be listed and sign the Application Forms.

2. Provide Deeds and Title for lot line change, including an overall description of the newly created lot 51-1-40.3.
3. Surveyor to certify that iron rods have been set at all property corners to Planning Board Engineer's specifications
4. Provide access easement to Municipal Lot.
5. Payment Of All Fees.

Seconded by Mr. McConnell. Motion carried; 5-Ayes.

John McGloin: Thank you.

David and Eileen Marcos

Application for Sketch Plat Review and Final Approval of a proposed Lot Line change, situated on tax parcels S 33 B 1 L 20.12 and L 20.13; parcels located on the western side of Belcher Road 2400 feet north of Kings Highway, in the RU zone, of the Town of Warwick.

Representing the applicant: Lou Powell from Eustance & Horowitz Engineering.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments: pending
4. Architectural Review Board comments: pending
5. OCPD: pending submittal
6. The Agricultural Data Statement does not include the Astorino Farm at 33-1-21.
7. Sketch Checklist I.17: A note should be added to the plan indicating buildable area per §137-21.A.
8. Sketch Checklist I.18: All lots shall conform with the square rule – 200-ft x 200-ft for RU zone (§137-21.K).
9. Sketch Checklist I.20: Estimate area of disturbance and note on the plan.
10. Limit of disturbance lines should be shown on the plan.
11. Proposed grading is not shown for the installed driveway, house, and septic system.
12. The stormwater measure to control the drainage along the driveways should be shown on the plan, including details.
13. These two existing properties are located in the Ridgeline Overlay but a line-of-sight profile was never completed for the location of the two houses because they were originally subdivided in 1987.
14. Final Checklist H: Service capacity letters should be submitted to the appropriate police, ambulance, fire district, and school.
15. The current drawing should include all applicable Town of Warwick Standard Notes from the Application Package (e.g., all projects, access to Town Highway, driveway notes, etc.)
16. Final Checklist I and L.16 regarding 9-1-1 addresses need to be submitted and shown on the plan.
17. Sheet 1, Note 5 indicates that the house, driveway, well, and sewage disposal systems for the two tax lots were taken from Filed Map #8324. Better reference should be made to this approved map: Plan of Major Subdivision for David Marcos, prepared by Eustance & Horowitz, dated 09/18/85, last revised 04/13/87, 1 sheet plan set; filed in Orange County as Map #8324. This filed map includes soil tests and details for septic systems, a well detail, as well as sight distances at driveway locations.
18. Two deeds were submitted (dated 1978 and 1981). It appears that that 1981 deed supersedes the 1978. The 1981 deed is for the three lots that are currently owned by the Mr. & Mrs. Marcos (33-1-20.11, 20.12 & 20.13). Separate deeds should be filed for each lot.
19. Surveyor to certify that iron rods have been set at all property corners.
20. The declaration information for the Ridgeline and Agricultural Notes will need to be shown on the drawing.
21. Payment of all fees.

The following comment submitted by the Conservation Board, dated 4/6/11:

David and Eileen Marcos – The CB has no further comments.

The following comment submitted by the ARB:

David and Eileen Marcos – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: The applicant has provided the Planning Board with a short EAF. It is a straight forward application. It is an Unlisted Action. There are no other agencies involved. The Planning Board could go ahead and declare itself Lead Agency.

Mr. Kowal makes a motion for Lead Agency.

Seconded by Mr. Singer. The following Resolution was carried 5-Ayes.

617.6

State Environmental Quality Review (SEQR)
Resolution Establishing Lead Agency
Unlisted Action Undergoing Uncoordinated Review

Name of Action: Marcos Re-Subdivision

Whereas, the Town of Warwick Planning Board is considering action on a proposed Subdivision application by David A. & Eileen S. Marcos for a ± 32.52 acre parcel of land located at Belcher Road, Town of Warwick, Orange County, New York, and

Whereas, an Environmental Assessment Form (EAF) dated 3/7/11 was submitted at the time of application, and

Whereas, after comparing the thresholds contained in 6 NYCRR 617.4 and 5, the Planning Board has determined that the proposed project is an Unlisted action, and

Whereas, the Planning Board has determined that the proposed project is within an agricultural district and, therefore, the requirements of 6 NYCRR 617.6(a)(6) apply meaning that an Agricultural Data Statement must be provided, forwarded to the owners of farm operations within 500 feet of the site and then considered by the Planning Board, and

Whereas, after examining the EAF, the Planning Board has determined that there are no other involved and/or federal agencies on this matter.

Now Therefore Be It Resolved, that the Planning Board hereby declares itself Lead Agency for the review of this action.

Be It Further Resolved, that a Determination of Significance will be made at such time as all information has been received by the Planning Board to enable it to determine whether the action will or will not have a significant effect on the environment.

Comment #2: Applicant to discuss project.

Lou Powell: The applicant wishes to move property line of SBL # 33-1-20.13 approximately 25 feet to the north so that the hedgerow, which goes to the back portion of the property, would all be on that tax lot. By doing that, it would make that tax lot now conform to the present zoning, which is 250 feet. One lot is currently 18 acres, which would go to 19.5 acres. The other lot, which is currently 14.5 acres, would go back to approximately 13 acres.

Comment #3: Conservation Board comments: pending

Comment #4: Architectural Review Board comments: pending

Comment #5: OCPD: pending submittal

Comment #6: The Agricultural Data Statement does not include the Astorino Farm at 33-1-21.

Lou Powell: Will do.

Comment #7: Sketch Checklist I.17: A note should be added to the plan indicating buildable area per §137-21.A.

Lou Powell: Ok.

Comment #8: Sketch Checklist I.18: All lots shall conform with the square rule – 200-ft x 200-ft for RU zone (§137-21.K).

Lou Powell: We will show that.

Comment #9: Sketch Checklist I.20: Estimate area of disturbance and note on the plan.

Lou Powell: Ok.

Comment #10: Limit of disturbance lines should be shown on the plan.

Lou Powell: Ok.

Comment #11: Proposed grading is not shown for the installed driveway, house, and septic system.

Lou Powell: Ok. We will add that.

Comment #12: The stormwater measure to control the drainage along the driveways should be shown on the plan, including details.

Lou Powell: Ok.

Comment #13: These two existing properties are located in the Ridgeline Overlay but a line-of-sight profile was never completed for the location of the two houses because they were originally subdivided in 1987.

Lou Powell: We will provide that.

Comment #14: Final Checklist H: Service capacity letters should be submitted to the appropriate police, ambulance, fire district, and school.

Lou Powell: Ok.

Comment #15: The current drawing should include all applicable Town of Warwick Standard Notes from the Application Package (e.g., all projects, access to Town Highway, driveway notes, etc.)

Lou Powell: Ok.

Comment #16: Final Checklist I and L.16 regarding 9-1-1 addresses need to be submitted and shown on the plan.

Lou Powell: Ok.

Comment #17: Sheet 1, Note 5 indicates that the house, driveway, well, and sewage disposal systems for the two tax lots were taken from Filed Map #8324. Better reference should be made to this approved map: Plan of Major Subdivision for David Marcos, prepared by Eustance & Horowitz, dated 09/18/85, last revised 04/13/87, 1 sheet plan set; filed in Orange County as Map #8324. This filed map includes soil tests and details for septic systems, a well detail, as well as sight distances at driveway locations.

Lou Powell: We will do that.

Comment #18: Two deeds were submitted (dated 1978 and 1981). It appears that that 1981 deed supersedes the 1978. The 1981 deed is for the three lots that are currently owned by the Mr. & Mrs. Marcos (33-1-20.11, 20.12 & 20.13). Separate deeds should be filed for each lot.

Lou Powell: Ok.

Mr. Bollenbach: It would be for the new lots. I will review that.

Comment #19: Surveyor to certify that iron rods have been set at all property corners.

Lou Powell: Ok.

Comment #20: The declaration information for the Ridgeline and Agricultural Notes will need to be shown on the drawing.

Lou Powell: I will check that.

Comment #21: Payment of all fees.

Lou Powell: Ok.

Mr. Bollenbach: Is there a dedication strip on this application?

Lou Powell: I will check on that.

Mr. Bollenbach: Take a look at the survey. See if it is 25 feet back from the centerline.

Lou Powell: It is. I think it might have been proposed.

Mr. Bollenbach: It had never been filed.

Lou Powell: There was another proposal after 1987. It might have been on that map.

Mr. Astorino: We will check that out.

Lou Powell: Ok. We will check that out.

Mr. Bollenbach: Maybe if it was referenced, you could reference the deed if it was recorded.

Lou Powell: Ok.

Mr. Kowal: Regarding comment #13, do we have to do a line-of-sight?

Mr. Astorino: Yes.

Mr. Kowal: Ok.

Mr. Bollenbach: What we have done on other applications was to have an alternate site so that you could have two sites located for one parcel.

Lou Powell: Ok.

Mr. Astorino: Do any Board members or Professionals have any comments. Do any Board members wish to set this application for a public hearing?

Mr. McConnell makes a motion to set the David and Eileen Marcos application for a Final Public Hearing at the next available agenda.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Lou Powell: Thank you.

Other Considerations:

1. Letter from Steven Spiegel, Attorney, dated 4/4/11 addressed to the Planning Board in regards to the Round Hill Subdivision – requesting a 6th Month Extension on the 4th Re-Approval of Final Approval of a proposed 19-Lot + 1-Ag Lot cluster subdivision, situated on tax parcel SBL # 7-2-51.1; parcel located along the northerly side of Wheeler Road between Meadow Road and Hunt Drive, in the RU zone, of the Town of Warwick. Final Approval was granted on, 10/18/06. The 4th Re-Approval of Final Approval was granted on, 10/6/10 became effective on, 10/18/10. *The applicant has stated that the extension is needed because of the condition for final approval requiring construction of roads and significant infrastructure, which real estate market and financial conditions do not permit at this time.* The 6th Month Extension on the 4th Re-Approval of Final Approval becomes effective on, 4/18/11.

Mr. McConnell makes a motion on the Round Hill Subdivision, granting a 6th Month Extension (Vote 5-0-0) on the 4th Re-Approval of Final Approval for a proposed Lot Line Change, SBL # 7-2-51.1. Final Approval was granted on, 10/18/06. The 4th Re-Approval of Final Approval was granted on, 10/6/10 became effective on 10/18/10. The 6th Month Extension on the 4th Re-Approval of Final Approval becomes effective on, 4/18/11.

Seconded by Mr. Kowal. Motion carried; 5-Ayes.

Correspondences:

1. Draft Letter to Michael Sweeton, Supervisor & Town Board from Planning Board – in regards to Yield Plan Determination response to 3/4/11 Supervisor Sweeton's Memo to Planning Board.

Mr. Astorino: Ted, you have done a great job on this letter. If the Board is in a consensus on this letter, we could send it off to the Town Board.

Mr. McConnell: Ok.

Mr. Singer: Ok.

Mr. Kowal: Ok.

Mr. Showalter: Ok.

Mr. Astorino: The Board is in consensus. We could send the letter to the Town Board. Thank you Ted.

2. Letter from Adam Peterson, NYSDEC, dated 3/16/11 addressed to the Planning Board – in regards to the Warwick Views Subdivision.

Mr. Astorino: We have that letter in our packets.

3. Letter from OCHD, dated 3/15/11 addressed to the Planning Department - in regards to the Warwick Views Subdivision.

Mr. Astorino: These are letters that we requested from those agencies.

4. Letter from Elmore Conklin, dated 3/29/11 addressed to the Planning Board – in regards to the Warwick Views Subdivision regarding Karst.

Mr. Astorino: As I had mentioned at the Work Session, I had a conversation with Mrs. Conklin. Ted, I don't know if you have seen that letter yet. Mrs. Conklin had listed some species. Maybe, you could look into that. I actually think this letter from Mrs. Conklin was very helpful.

Mr. Fink: Yes.

Mr. McConnell: Did Mrs. Conklin say that the karst was unique?

Mr. Astorino: Yes.

Mr. McConnell: That was the question that we had the other night.

Mr. Bollenbach: Dennis, do you want to elaborate that?

Mr. McConnell: The question was the species identified that they are unique to karst formation.

Mr. Bollenbach: Are they exclusive to karst formation?

Mr. McConnell: That is why Ted is looking at that.

5. Letter to Adrian Goddard, Fairgrounds Applicant, dated 3/22/11 from M.J. Schleifer OCHD in regards to Fairgrounds #2 Expansion of Water System Capacity to 10,000 gpd.

Mr. Astorino: We talked about that.

6. Planning Board Minutes of 3/16/11 for Planning Board's Approval.

Mr. Kowal makes a motion to Approve the 3/16/11 Planning Board Minutes.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes.

Privilege Of The Floor For Agenda Items!!

Mr. Astorino: If there is anyone in the audience wishing to address any of the agenda items, please rise and state your name for the record. Let the record show no public comment. Regarding the 4/11/11 Work Session and the 4/20/11 Planning Board meeting, essentially we only have one application on the agenda at this time. On the agenda are two applications. One application if Global Tower. The other application is Carroll Equipment Subdivision. But, their escrow is deficient. What is the Board's pleasure? Do you want to have meeting for one application?

Mr. Bollenbach: Let's scratch it.

Mr. Kowal: Let's cancel it.

Mr. Showalter: Let's cancel it.

Mr. Astorino: Ok. We will cancel the 4/11/11 Work Session and the 4/20/11 Planning Board meeting.

Mr. Bollenbach: We will post notice of the cancelled meetings.

Mr. Astorino: Ok.

Mr. McConnell makes a motion to adjourn the April 6, 2011 Planning Board meeting.

Seconded by Mr. Singer. Motion carried; 5-Ayes.