TOWN OF WARWICK PLANNING BOARD
April 16, 2008

Members present: Chairman, Benjamin Astorino
Russell Kowal, Dennis McConnell
Roger Showalter, Carl Singer
Zen Wojcik, Tectonic Engineering
J. Theodore Fink, Greenplan
John Bollenbach, Planning Board Attorney

The regular meeting of the Town of Warwick Planning Board was held Wednesday, April 16, 2008, 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 Edward and Mary Jordan**

Application for final approval of a proposed 3-Lot cluster subdivision, situated on tax parcel S 55 B 1 L 27.2; parcel located on the southern side of Bellvale Lakes Road at the intersection with Lower Wisner Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the March 19, 2008 Planning Board meeting.

Representing the applicant: Dave Getz from Lehman & Getz Engineering. Guy Jordan, Applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
   A. Planner to discuss proposed screening plantings.
2. Applicant to discuss project.

**YIELD PLAN (11/18/05, REVISED 4/14/08):**

3. On the Board accepted Yield Plan (consensus on March 7, 2007), the proposed septic system for Yield Lot #3 was within the 100-foot wide agricultural buffer (adjacent to SBL 58-1-9, mislabeled as SBL 58-1-10.1). Additional percs and deeps were witnessed at an alternative site, resulting in the location of a suitable absorption field in a location outside the agricultural buffer, as shown on the revised plan. Board to consider revised Yield Plan.

**CLUSTER PLAN (11/18/05, REVISED 2/21/08):**.

4. Common driveway allowable maximum grade is 12%. Proposed road has a 14% grade. Applicant has prepared a comparison plan and is requesting a waiver due to topography. Board to consider.
5. Show a 100-foot wide agricultural buffer along property boundary with Buckbee and Bogdanski farms. Provide notes to the Planning Board Attorney's specifications.
6. Place Demolition Notes on plan. Include septic field abandonment & oil tank removal. If applicant opts not to demolish house, but move it to one of the new lots, note "House to be removed" on plan and show future location.

**BEFORE FINAL APPROVAL:**

7. Applicant to consider an irrevocable offer of dedication strip on Lots 1, 2 and 3 within 25 feet of the centerline of Bellvale Lakes Road. Provide recording information for the dedication strip on the plans.

8. Provide declaration & recording information on map for Common Driveway & Drainage Use & Maintenance Agreement, Ridgeline Protection Notes, Open Space Notes, Agricultural Protection Notes and Stipulation of Settlement Notes.
9. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns set at corners of open space.
10. Provide a copy of the NOI submitted to the NYSDEC.
11. Pay parkland fees.
12. Pay performance bond and construction inspection fee for common driveway, drainage and soil erosion control. Pay landscape maintenance bond for screening landscaping.
13. Pay outstanding review fees.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §164-41.2K(5) | Common Driveway – waiver from maximum 12% grade, allowing 14% maximum grade. |
| §164-41.1G(4) | Agricultural buffer – waiver to allow clearing for and maintenance of a septic absorption field within the agricultural buffer. |

The following comment submitted by the Conservation Board, dated 4/16/08:

Edward and Mary Jordan – The CB has no further comments.

The following comment submitted by the ARB, dated 4/16/08:

Edward and Mary Jordan – None Submitted.

Comment #1: Board to discuss SEQR.

A. Planner to discuss proposed screening plantings.

Mr. Fink: The Planning Board has been acting as Lead Agency on this application. There were a number of SEQR issues that we had examined over the last couple of years with regard to this parcel. One issue was the proximity to Longhouse Creek and the steep slopes that the proposed common driveway would have to be constructed into. Erosion control sedimentation was an issue as far as that is concern. The site, eventhough it is not within an Agricultural District itself, it adjoins agricultural lands. It was my understanding that the applicant would be adding a 100-foot buffer to the adjacent agricultural lands so that they could comply with §164-41(D)(3) of the Zoning Law. Although the site is not within the Town's Ridgeline Overlay District, the applicant had offered to comply with the Ridgeline Overlay District requirements. Partly, it would include mitigation plantings. The applicant has included the planting of some evergreen trees on lot 2 to provide some screening. They are specified on the plan as 4 to 6 feet in height. The Zoning does specify at least 6 feet in height.

Mr. Astorino: It is usually 6 feet or greater.

Mr. Fink: Right. The only other issue was the issue of the common driveway. That might require some mitigation plantings. I was supposed to go out to the site. I remembered that

on my way here to the meeting tonight. Unfortunately, I did not get to the site today. I will take care of that.

Mr. Astorino: We could make that a condition to the Planner's specifications.

Mr. Fink: Yes.

Comment #2: Applicant to discuss project.

Dave Getz: The only change since our last appearance was that we had done soil testing at a different location on lot 3, so that we could comply with the 100-foot buffer from the neighboring agricultural properties.

**YIELD PLAN (11/18/05, REVISED 4/14/08):**

Comment #3: On the Board accepted Yield Plan (consensus on March 7, 2007), the proposed septic system for Yield Lot #3 was within the 100-foot wide agricultural buffer (adjacent to SBL 58-1-9, mislabeled as SBL 58-1-10.1). Additional percs and deeps were witnessed at an alternative site, resulting in the location of a suitable absorption field in a location outside the agricultural buffer, as shown on the revised plan. Board to consider revised Yield Plan.

Mr. Astorino: Do any Board members have any comments on the revised yield plan? Do we have a consensus on the revised yield plan?

Mr. McConnell: Yes.

Mr. Kowal: Yes.

Mr. Astorino: Ok. We have a consensus on the change on the yield plan.

**CLUSTER PLAN (11/18/05, REVISED 2/21/08):**.

Comment #4: Common driveway allowable maximum grade is 12%. Proposed road has a 14% grade. Applicant has prepared a comparison plan and is requesting a waiver due to topography. Board to consider.

Mr. Astorino: Do any Board members have any questions on the waiver of 12%? We also have the comparison plan.

Mr. Kowal: Yes.

Mr. Bollenbach: Zen, do you want to elaborate on that a little bit?

Zen Wojcik: At the workshop, we had the consensus plan on the table for the Board to consider. It was clearly shown on the plan by going with a 12% grade there would be a great deal of additional cut. It was estimated to be 430± c.y. of additional cut by the engineer. The Board took a look at it and figured out that it would be a less of an impact by going with 14%.

Comment #5: Show a 100-foot wide agricultural buffer along property boundary with Buckbee and Bogdanski farms. Provide notes to the Planning Board Attorney's specifications.

Dave Getz: We have it set. It provides that. We will show those notes.

Comment #6: Place Demolition Notes on plan. Include septic field abandonment & oil tank removal. If applicant opts not to demolish house, but move it to one of the new lots, note "House to be removed" on plan and show future location.

Mr. Astorino: John, does that have to be done within 180-days?

Mr. Bollenbach: Yes. If we approve it today, it would be within 180-days. Mr. McConnell had a question regarding the demolition. There is no requirement that the house be demolished. It is just that the house be removed. Either it would be one big piece or little pieces.

Mr. McConnell: The other part of my question was that did removing it fall under the same time restrictions as demolishing it?

Mr. Bollenbach: Yes. It did.

Mr. McConnell: I just wanted to make sure that was clarified and on the record that we didn't have that sitting there much longer.

Mr. Astorino: This is at the time of condition of final approval. If this gets approved this evening, this would start tomorrow. That would be day one.

Mr. McConnell: Ok.

**BEFORE FINAL APPROVAL:**

Comment #7: Applicant to consider an irrevocable offer of dedication strip on Lots 1, 2 and 3 within 25 feet of the centerline of Bellvale Lakes Road. Provide recording information for the dedication strip on the plans.

Dave Getz: They are considering that.

Comment #8: Provide declaration & recording information on map for Common Driveway & Drainage Use & Maintenance Agreement, Ridgeline Protection Notes, Open Space Notes, Agricultural Protection Notes and Stipulation of Settlement Notes.

Dave Getz: We will provide that.

Mr. Bollenbach: Let us add to that comment to say; revise notes to Planning Board Attorney's specifications.

Dave Getz: Ok.

Comment #9: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns set at corners of open space.

Dave Getz: We will provide that.

Comment #10: Provide a copy of the NOI submitted to the NYSDEC.

Dave Getz: Ok.

Comment #11: Pay parkland fees.

Dave Getz: That is understood.

Comment #12: Pay performance bond and construction inspection fee for common driveway, drainage and soil erosion control. Pay landscape maintenance bond for screening landscaping.

Dave Getz: Ok.

Mr. Bollenbach: Add to that comment; provide supplemental landscaping to the Town Planner's specifications.

Comment #13: Pay outstanding review fees.

Dave Getz: Ok.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §164-41.2K(5) | Common Driveway – waiver from maximum 12% grade, allowing 14% maximum grade. |
| §164-41.1G(4) | Agricultural buffer – waiver to allow clearing for and maintenance of a septic absorption field within the agricultural buffer. |

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

Mr. Singer: Before we open this application to the public hearing, I have some concerns. We as a Board have an obligation to treat all applicants before use equally, with fairness, and consistency. Recently we had an application before the Board for a Hunting Club who wanted to put up a 4-foot fence to stop trespassers and ATV's. They wanted to protect their property. They were willing to pay for that fence. It took us 2 years to give them permission to pay for their own fence. I have neighbors who frequently trespass and ride ATV's on my property. It is against the law to do that. My options are to call the police or put up a fence and pay for it. Tonight, we have an application coming before us called Dayspring-Baum. I know that it is not the one currently standing in front of us. At the last public hearing/meeting, this Board was leaning towards requiring Dayspring-Baum the developer to put up a fence to not to protect them, but stop them from going onto the neighbor's property trespassing or using ATV's. It is the same thing as the two examples that I have just given you. We are leaning towards forcing them to put up a fence and paying for it. Then, we are leaning towards requiring the applicant to set up a HOA to repair the fence if it needs repair to stop them from going onto the neighbor's property. That neighbor has the same rights as the two examples that I had given previously; that they could call the police if there are trespassers or they could put up a fence. I think that it is their obligation to put up a fence, not the developers, or the residents next-door. It is not up to the residents

next-door to repair the fence if there ever was a problem. What is the relationship of that to this applicant? This applicant is also abutting an agricultural property. For agricultural properties, we give them the consideration of having 100-foot buffer. We could require them to have 200-foot buffer. The other applications tonight are the Luft application and in 2 weeks, we have the Nop application. All of those applications are abutting agricultural lands. There has been no talk of a fence on them. There has been no talk of a fence on the Jordan subdivision. My point is, if we are going to require Dayspring-Baum to put up a fence, we should certainly require Jordan, Luft, and Nop to put up a fence. My position is that it is unjust and unreasonable to require a developer to put up a fence so that the people that live there could not go onto someone else's property. We have laws to protect that farmer. We should not insist on a developer to put up a fence. How does the rest of the Board feel about this?

Mr. Astorino: My only point being is that there was one requested out on Merritts Island.

Mr. Singer: I think we had made a mistake there. But, we also had the Moore subdivision, where houses were abutting agricultural properties. We did not put up a fence.

Mr. Astorino: Carl, I look at it as a case-by-case basis.

Mr. Singer: I don't. I think we should treat everybody equally. They have the good sense to come before us and make a case so we lean towards it. I think that is wrong.

Mr. Astorino: That is your opinion. The other Board members might have different opinions, if they hear something from the public. I cannot speak for the Board.

Mr. Bollenbach: Mr. Chairman, in this particular case, Skip Buckbee had appeared before the Board at least twice. His concern was the agricultural buffer. It was brought to the Board's attention. That was why the yield plan was revised and modified. There was no request for a fence. I don't think there is any request before the Board.

Mr. Singer: I don't care with what a neighbor says. I am saying that we should treat people justly whether a neighbor thinks of it or not. How could we require one person to put up a fence and not all the others?

Mr. Bollenbach: The reason for that would be that you would evaluate that on a case-by-case basis.

Mr. Singer: It is the same chances of this development using ATV's and trespassers.

Mr. Astorino: Not to get off the Jordan project, but Mr. Sanford brought it up on the Dayspring-Baum applications that he has animals up there. I believe that they are pastured up there. His concern was that they would get through and someone would cut the fence.

Mr. Singer: His concern was primarily ATV's.

Mr. Astorino: I listened to the same thing as you had. Maybe, we had a little different interpretation.

Mr. Singer: But, if we are going to say that Dayspring-Baum would have to have a fence, then Jordan, Luft, and Nop should have a fence. If we are not going to say yes to fences on there, then we should not say yes on a fence to Dayspring-Baum. Roger, what do you think?

Mr. Showalter: I personally think that if you want fences and it is on agricultural property, I think the farmer should maintain the fence.

Mr. Bollenbach: No. That is not what is provided in the code.

Mr. Showalter: John, I believe that. What I think, if the farmers have animals to pen in, I think the farmer would want to have a good fence to keep animals on his property and to keep other things out of his property. In the case of Dayspring-Baum, if you put a fence, in my opinion I don't see the fence matching or being sturdy for the farmer, if we are trying to separate Mr. Sanford's property from the Dayspring-Baum's property. John, the chain-link fence, I don't see that being a farm type fence. We should look at it on a case-by-case basis. Mr. Buckbee or Mr. Bogdanski farms that border the Jordan subdivision, if they feel they don't want to be encroached on by the potential homeowner, they should look at putting a fence up. I do agree with Carl that we should look at each one closely and try not to put an expense on where it doesn't need to be necessarily placed.

Mr. Astorino: Or, an undue burden.

Mr. Showalter: Yes.

Mr. Astorino: That is a valid point.

Mr. Showalter: We need to take a closer look since we are getting into this a little bit. Again, it is a tune up issue. We are learning as we go along.

Mr. Singer: There is nothing in the code that says, we should require a fence. What we do have in the code is that farmland is treated special and the code recommends up to a 200-foot buffer, but requires at least 100-foot buffer. No other property gets that. We are doing that to protect the farmer. What more could we do? What we give to one, we should give to all. We can't choose because of unparticular reasons.

Mr. Bollenbach: Carl, are you proposing a fence for this project?

Mr. Singer: I am dead set against a fence on Dayspring-Baum.

Mr. Astorino: Let us talk about the Jordan application.

Mr. Singer: If you are going to require a fence on Dayspring-Baum, you should also require a fence on Jordan, Luft, and Nop applications.

Mr. McConnell: I think there is a big difference between this proposed development and Dayspring-Baum. If nothing else, the lay of the land is a lot different. The number of houses abutting the agricultural land is a lot different. Without speaking to Carl's question as to whether it should or should not be required, I could differentiate these two things. I think with all due respect, we should deal with the Jordan application now. There is no question of a fence. There is no one asking for a fence. There is no one suggesting if they want to put one up. I think we

should deal with this. We will have ample opportunity to discuss the Dayspring-Baum application in about 20 minutes.

Mr. Singer: The reason why I did not want to do that was that we are treating people differently.

Mr. McConnell: Mr. Singer, with all due respect, it has already been pointed out that we had a neighbor come and ask for a fence. We could then consider it. The facts and circumstances are so different between this application and that application. There are real differences in the two subdivisions.

Mr. Singer: But, there is no difference between this subdivision and the Luft's subdivision. There are more houses up on the Luft farm.

Mr. McConnell: When I was in Law School, I had professors that loved to put hypotheticals to you. Hypothetical's are fine for intellectual discussions. I don't think they are appropriate here.

Mr. Singer: There is nothing hypothetical that I am talking about.

Mr. Kowal: We need to take it on a case-by-case basis. Because, some areas are more conducive to ATV's and trespassers than others.

Mr. Astorino: Does the Board have anything further on the Jordan application?

Mr. Singer: Yes. I listened to what Mr. Malocsay said about the Comprehensive Plan. I know that he had given a lengthy talk several times about it. He said that this project was not what the Comprehensive Plan had in mind in clustering regarding the advantage of clustering. This project is different in that it is just a 3-lot subdivision. That was never the intention of the Comprehensive Plan. I think that most of the Board members here feel that this is wrong regarding these small subdivisions. We know that it is not following the Comprehensive Plan. We have the power to stop this subdivision, if we require the 200-foot buffer instead of the 100-foot buffer to the agricultural land, then they wouldn't be able to build this subdivision. That is a reasonable thing to ask them to do, if we are against this type of subdivision because it does not follow the Comprehensive Plan.

Mr. Astorino: Do any other Board members have any comments? This is a public hearing. If there is anyone in the audience wishing to address the Jordan application, please rise and state your name for the record.

Mark Malocsay: I live on Bellvale Lakes Road. I have two things. First, I wasn't going to talk at all about the fence. I agree on the fence issue with treating each one individually. The back part of the property already has a fence up. You can't get through it. The other part of the fence property that goes along Al Buckbee is a stonewall relatively high to the entire length with the exception of one section that has where the water runoff comes through. It is basically fenced off by a stonewall. Then, there is a fence in the back which is a deer fence to keep them out of the willows.

Mr. Singer: In rebuttal to that, the Sanford farm also has a stonewall.

Mark Malocsay: There is only one spot to get through where the ATV's cross through. The rest of the stonewall is pretty high. It would not stop somebody from walking across. It was just a

point so that if the Board was even thinking about requiring putting up a fence, which I would disagree with because the Buckbee's didn't say anything about it.

Mr. Singer: I disagree with fences entirely.

Mark Malocsay: To replace some of the stones that were knocked down on the stonewall, that would solve the problem. I went to the work session and was at the meeting before where I brought up about the well issue. I did not hear any discussion today about that. I was wondering why?

Mr. Astorino: Zen, did we get results? Did we ask for results from them?

Zen Wojcik: I don't think there were any.

Mr. Bollenbach: There was something from Lehman & Getz.

Zen Wojcik: I think there was a well there that was shallow.

Dave Getz: I don't have a copy. But, the applicant reported that they have a fairly shallow well. It has never caused a problem over the years.

Mr. Bollenbach: Dave, I believe that it served up to 4 families at one time.

Dave Getz: Yes.

Mr. Bollenbach: They did not experience any difficulties.

Dave Getz: Yes. That was what I was going to point out. What is proposed here are 3 homes. There are 2 homes on the property now. One structure was used as apartments at one time. The density here is not an increase over what was historically there.

Mark Malocsay: I wasn't arguing on the point of the shallow wells because on that, I don't think they met up with the code. I was talking about the drilled wells that would have to be put in that would have to meet up with the code, they would have to produce a certain amount of water. My house and well are a lot closer than those two wells that are going in. I get 1.5 g.p.m. at 300 feet. I don't think it would be unreasonable to drill one well in its location to make sure that they are getting the volume of water. That was all I asked. If you approve this, they drill, and they get 1.5 g.p.m., they can't use that well. You are putting 2 houses in there.

Mr. Astorino: They would have to meet the requirements. There are certain standards.

Mark Malocsay: Ok. So, if they drill a well and get 10 g.p.m., then they shouldn't have a problem with the other wells. I think that it is a reasonable request. I will not argue that many wells there are shallow. Many wells there are hand dug. You are going to have water there. We have a stream there that filters through. Almost everyone there that has a shallow well has a filtration system on it. This goes as far as the Bellvale Methodist Church and then goes up the road. Most of the homes there are over 100 years old.

Mr. McConnell: Are you concerned that the wells that are going to be dug here for the 2 new lots that digging those wells would have an adverse affect on your well?

Mark Malocsay: I don't know. I don't know if it would or would not have an effect on my well.

Mr. McConnell: I know that you don't know. I am asking if you are concerned about it.

Mark Malocsay: Not knowing, I would be concerned about it. We have been fine with 1.5 g.p.m. with 3 girls. Have we ever run out of water, yes. It takes about 4 hours to run it dry. I don't think it is an unreasonable request for the Board to consider at least drilling one well to make sure they would get the volume of water.

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

Todd Sommer: I just wanted some clarification on the existing dwelling that is to be removed. I know that there was some discussion on the demolition versus removal. According to the stipulation that is in place, it needs to be removed from the property before any permits or subdivision could proceed.

Mr. Astorino: They have 180 days from the condition of final approval.

Todd Sommer: Correct. If they choose to use it for one of the other lots, it has to be physically removed from the property to some other location, and then the permits are processed. Then, it could be moved to one of the other lots once everything is done. So, it could not be moved to a side yard for 10 months or whatever.

Mr. Astorino: No. John, could you clarify that?

Mr. Bollenbach: It is to be removed from the property.

Todd Sommer: Thank you.

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

Mark Malocsay: If there is going to be some additional information, I would ask if the public hearing could remain open. What you decide to do, that would be up to you. I just wish it would remain open just in case some more information is brought forward. Thank you.

Mr. Astorino: Is there anyone else wishing to address the Jordan application? Let the record show no further public comment. Do any Board members have any further comments?

Dave Getz: We would request that well testing be done at the time of a building permit or C of O. They would have to apply for a well permit. They would have to demonstrate that they could meet the codes. It is not an increase in density for the neighborhood.

Mr. Singer: I have no objections to that.

Mr. Astorino: I don't have any objection to that either.

Zen Wojcik: That particular stipulation has been kicked around at some other projects. I think the Board discussed waiting that long for those results.

Mr. Astorino: In this case, we are talking about 2 additional lots. The well has to meet a certain requirement regardless. Monitoring could be done. I agree with Mr. Singer. I don't have a problem with that. I don't know how the rest of the Board feels?

Mr. Singer: To clarify my position, if we do it before a building permit, I would be comfortable with that.

Mr. Astorino: Yes. That was what I was saying. Is the rest of the Board comfortable with that?

Mr. Bollenbach: That would be done prior to a building permit.

Mr. Astorino: Yes.

Mr. Singer: We would want them to monitor it.

Mr. Astorino: You are only talking about a few wells to be monitored. I don't think there is that many.

Mr. Bollenbach: Within 500 feet of the property line, that would have several wells. I don't believe there is a drilled well history of water deficiency within that area.

Mr. McConnell: It seems to me that we have not heard of deficiency. Mr. Malocsay had said at 1.5 g.p.m. with 4 girls in the house, it was good for 4 hours.

Mr. Bollenbach: That was a hand dug well. This is not hand dug.

Mr. Astorino: Do you want to test Mr. Malocsay's well? That is the closest well to those lots. Is that correct?

Zen Wojcik: Yes. It is right next to it. Again, the point being is to find out what the Board wants.

Mr. Astorino: I believe it is to have a drilled well before a building permit is issued.

Mr. McConnell: I didn't hear Mr. Malocsay ask for the monitoring of his well. What he had asked for was to prove out the new wells. I don't have a problem with that as long we require it before a building permit. I think to go from that to requiring them to monitor what we have been doing in the past, which was 1000 feet, that would make no sense.

Mr. Astorino: So, we would have them drill a well before a building permit.

Mr. McConnell: Yes.

Mr. Showalter: I agree with Dennis.

Zen Wojcik: Would that be for both lots?

Mr. McConnell: Yes.

Mr. Astorino: Does the Board have any further comments?

Mr. Showalter 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**: Jordan Subdivision

**Whereas**, the Town of Warwick Planning Board is the SEQR Lead Agency for conducting the environmental review of a proposed 3 lot subdivision, 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 12/19/05 and as revised 2/27/06, 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. McConnell makes a motion to close the public hearing.

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

Mr. McConnell makes a motion to grant a waiver §164-41.2K(5) Common Driveway – waiver from maximum 12% grade, allowing 14% maximum grade.

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

Mr. Astorino: We need a motion on the 2nd waiver for the Agricultural buffer.

Mr. McConnell: I thought we had moved that absorption field. I don't believe this waiver is required anymore.

Zen Wojcik: I don't have a set of plans that showed a septic absorption field for the cluster within the agricultural buffer area. If the applicant has changed that, he has to send that to the Board.

Mr. McConnell: He did send it.

Zen Wojcik: We have a yield plan that shows it. I don't have a cluster plan that shows it.

Mr. McConnell: Ok. That was my mistake.

Zen Wojcik: Please clarify.

Dave Getz: We have it here. It hasn't been officially submitted. The sewage disposal area is the same. I will show you the plan.

Zen Wojcik: Ok. Mr. Chairman, we don't need that 2nd waiver regarding the Agricultural buffer.

Mr. Astorino: Ok. We don't need that 2nd waiver.

Mr. Showalter: Ok. We could strike that 2nd waiver.

Mr. Kowal makes a motion on the Edward and Mary Jordan application, granting final approval for a proposed 3-Lot cluster subdivision, situated on tax parcel S 55 B 1 L 27.2; parcel located on the southern side of Bellvale Lakes Road at the intersection with Lower Wisner Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Show a 100-foot wide agricultural buffer along property boundary with Buckbee and Bogdanski farms. Provide notes to the Planning Board Attorney's specifications.
2. Place Demolition Notes on plan. Include septic field abandonment & oil tank removal. If applicant opts not to demolish house, but move it to one of the new lots, note "House to be removed" on plan and show future location.
3. Applicant to consider providing dedication strip on Lots 1, 2 and 3 within 25 feet of the centerline of Bellvale Lakes Road. Provide recording information for the dedication strip on the plans.
4. Provide declaration & recording information on map for Common Driveway & Drainage Use & Maintenance Agreement, Ridgeline Protection Notes, Open Space Notes, Agricultural Protection Notes and Stipulation of Settlement Notes. Revise Notes to Planning Board Attorney's specifications.
5. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns set at corners of open space.
6. Provide a copy of the NOI submitted to the NYSDEC.
7. Satisfactory well to be installed prior to issuance of a Building Permit for Lots #2 and #3. Place note on plan and include in declaration.
8. Pay Parkland Fees.
9. Pay Performance Bond and Construction Inspection Fee for common driveway, drainage and soil erosion control. Pay Landscape Maintenance Bond for screening landscaping. Provide supplemental landscape to Town Planners specifications.

10. Pay Outstanding Review Fees.

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

Dave Getz: Thank you.

**PUBLIC HEARING OF Masanda-Luft Properties, LLC.**

Application for Final Approval of a proposed 22-Lot cluster subdivision + 2-Affordable Homes subdivision and special use permit for the affordable homes, entitled ***"Kenneth Luft Subdivision"***, situated on tax parcel S 26 B 1 L 110; parcel located on the northern side of Newport Bridge Road and at the intersection with Blooms Corners Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York. Preliminary Approval was granted on 5/17/06. Continued from the 3/19/08 Planning Board meeting.

Representing the applicant: Kirk Rother, Engineer.

Connie Sardo: Mr. Chairman, we have received the certified mailings for the Luft public hearing.

Mr. Astorino: Thank you. Kirk, congratulations on your new arrival of your baby girl.

Kirk Rother: Thank you.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.

A. Part I EAF states that blasting will be necessary. General Note 26 states that there will be "no blasting". Applicant verifies unequivocally that there will be no blasting.

2. Applicant to discuss project.

**YIELD PLAN (REVISED 1/10/2005)**

3. No further comment. Board reached consensus on the Yield Plan on July 6, 2005.

**CLUSTER PLAN (REVISED 4/10/2008)**

4. Revise proposed Town road typical section per the road pavement design.
5. Provide landscaping at the border of the agricultural buffer per the Town Planner's specifications. Provide Agricultural Buffer Notes to the Planning Board Attorney's specifications.
6. Provide supplemental screening landscaping, to the Town Planner's specifications, on Lots 1 and 12.
7. Place a Private Road Note on the plans, to the Planning Board Attorney's specifications.
8. Regarding Special Condition 100 (§164-46J(100)) – Affordable Housing: Applicant has submitted renderings, construction standards, and a marketing plan. Board to discuss.
9. Consistently label open space, not conservation easement.
10. Applicant is requesting a special approval for a maximum road grade of 14% on Private Road 'B'. Board to consider.
11. Extend property lines for lots along Private Road 'B' to centerline of road.
12. Town Board has approved the marketing plan (revised 4/8/08) for affordable housing. Per §164-46J(100)(g), Planning Board to consider.

**BEFORE FINAL APPROVAL**

13. Surveyor to certify that iron rods have been set at all property corners and stone cairns have been set at corners of open space.
14. Provide copies of the NOI and the signed final SWPPP.
15. Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Private Road Notes, Private Road and Stormwater Management Facilities Use and

Maintenance Agreement Notes, Open Space Notes, Radon Reduction Notes, and Affordable Housing Notes.

16. Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.
17. Provide irrevocable offer for road dedication for Road "A" for the Town Board's approval. Propose an acceptable road name and place on plans. Provide for the Planning Board Attorney's review, legal descriptions of dedication strip, drainage easements, stub road, and temporary cul-de-sac.
18. Applicant to provide 9-1-1 addressing.
19. Pay parkland fees.
20. Pay construction inspection fee and performance bond for proposed Town road, private road, Town road realignment, stormwater management facilities, and erosion control.
21. Pay a three-year landscape maintenance bond for stormwater pond landscaping, road bed reclamation at Newport Bridge/Blooms Corners Roads intersection and street trees.
22. Pay outstanding review fees.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §A168 Appendix E ¶B (4) | Private road – special approval for maximum 14% grade. |

The following comment submitted by the Conservation Board, dated 4/16/08:

Masanda-Luft Properties, LLC. - The CB supports granting a waiver to 14% grade to reduce cut and fill impact associated with the access road. The CB also supports the agricultural set back on the farm side of the property since this will keep it under the control of the farmer which should enhance the goal of protecting farming activities.

The following comment submitted by the ARB, dated 4/16/08:

Masanda-Luft Properties, LLC. - The ARB would like to see the agricultural setback treated exactly the same whether under ownership of the residents of the new lots or the owner of the farmstead remainder.
In the future, more care needs to be taken to not deprive new residents of the benefits of the open space as we see here on lots 13,17,18,10, 9 and 14.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has fully complied with SEQR. We have issued a Negative Declaration on this application prior to the granting of preliminary subdivision approval. There is no further action under SEQR necessary at this time.

A.) Part I EAF states that blasting will be necessary. General Note 26 states that there will be "no blasting". Applicant verifies unequivocally that there will be no blasting.

Kirk Rother: It is so verified.

Mr. Astorino: There will be no blasting.

Comment #2: Applicant to discuss project.

Kirk Rother: The Board is familiar with the project. We have obtained OCHD approval with no changes to the layout since the preliminary approval was granted. At the last public hearing, there were a couple of open ended items that were yet to be resolved. Road subbase testing of the proposed roadway has been completed. It was forwarded to Zen's office. I believe that Zen was satisfied with the results of that testing. The Marketing Plan was presented to the Board. It was revised for the workshop. I received a memo that the Town Board accepted the Marketing Plan on April 10, 2008. There was some discussion at the workshop and at the last meeting regarding some proposed mitigation plantings along the property line behind lots 1 and 12 for Mrs. Fisher. We have no objection to doing that. These plans don't reflect that at this time. We will certainly add it. The last thing we spoke about at length was the agricultural buffer not so much whether or whether not it should be there, but who should own it. We presented a revised plan to the Planning Board where we extended the property lines of the residential lots so that the buffer would be within those lots. At the workshop, I presented the Board with two alternatives and the buffer highlighted. I believe it was a consensus of the Board at that time, that we would go back to the original plan and leave the agricultural buffer on the agricultural lands.

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

Mr. Singer: I thought about the buffer since the workshop. I said that the purpose of the agricultural buffer was the experience of farmers when a new development goes next to them that the residential house owners complain about the noise of the farm equipment, the smell of animals, and the fumes and dangers of the fertilizers used. The code recommends a 200-foot buffer so that the farmer would not have these problems. On this project, we decided to leave a 100-foot buffer. But, the 100-foot buffer is usually on the residential piece. In this case, we talked about putting it on the farmer's piece and that he would want to leave it in hay. If he wants to leave it in hay, that means he is going to farm it. He is going to use chemicals and equipment to cut the hay. That is what the buffer is for. The buffer is there to stop that.

Mr. Astorino: Correct me if I am wrong, as far as this buffer, it was going to be marked out. It is an Ag buffer from the residential line to this point. Whatever conditions apply with the Ag buffer goes with that. Is that correct?

Kirk Rother: We spoke about this at the workshop.

Mr. Astorino: I wasn't at that workshop.

Kirk Rother: The question from my mind was to segment this buffer amongst all of these residential lots. Who is going to prevent those people from mowing that and using that as their backyard.

Mr. Singer: That was done on most of the developments that we have approved.

Kirk Rother: Along with the discussion, we agreed to have it as a more contiguous buffer on the larger lots. We did talk about what could and couldn't be done within that area.

Mr. Singer: There is nothing to stop the farmer from using that 100 feet.

Kirk Rother: You could impose a restriction.

Mr. Astorino: We are getting a little carried away with this. You have a contiguous piece of open space that the Lufts themselves are retaining ownership as far as I know at this point. 100-foot buffer is required. A 200-foot buffer is recommended. That is the way it reads in the code. If we were requiring 100 feet, what other restrictions would be on that piece? If you can't go in and mow it, it would turn to brush. John, could it be mowed?

Mr. Bollenbach: I have been looking at that. What we are looking for is some type of an effective buffer. There were some landscape plantings proposed. Ted, will probably take a look at that. Perhaps, we should have a strip, if it is 50 feet wide or something to that effect. We could have on other easements to have a no-mow. If it is a 50-foot wide, that would regenerate, except for the removal of dead diseased trees or vegetation.

Mr. McConnell: I don't know if this Section of the Code is exclusive, but it describes it. This is from §164-41.1G(4). It is stated as follow: *"Where this buffer is unwooded, the Planning Board may require vegetative screening to be planted, or that it be managed to encourage natural forest succession through no-mow policies and the periodic removal of invasive alien plant and tree species."*

Mr. Bollenbach: That was what I had said. Do some landscape plantings to the Town Planner's specifications and gain a 50-foot no-mow strip. We could incorporate that.

Mr. Singer: Why 50 feet? Why not 100 feet? That is the buffer.

Mr. Bollenbach: It would be whatever the Board would like to do. I am saying that you are trying to balance off. You already have a setback from the residential dwellings in addition to this. How much of the agricultural land does the Board want to use up?

Mr. Astorino: That was my point exactly.

Mr. Bollenbach: I am looking at to have some reasonable approach.

Mr. Showalter: We talked about this at the work session. My point was that this is a farm. One of the reasons that people come to Warwick is that people like the character of farms. I think there are many people that like living next to a farm than people who don't. If you live next to a farm then you ought to know that there could be pigs, cows, and obnoxious odors.

Mr. Astorino: It is on the plan.

Mr. Bollenbach: That is why you have Ag notes.

Mr. Showalter: What I had said at the meeting was that the character of the farm was being able to grow hay, corn, or whatever on the farm. I think we are being restrictive to the farmer. That is taking land almost out of agriculture. Yes, it is open. Why not let the farmer use it? If he is only haying it, let him hay it. It has been hayed for a long time. Let him hay right up to the edge.

Mr. Bollenbach: We have to provide some type of an Ag Buffer.

Mr. McConnell: I think the notion of what Roger is talking about works differently depending upon on how it is used. If it were to remain as hay forever, then that is a little bit different from if you had the next person who owns this agricultural property decides to do something else with it. I think we need to provide a real buffer. I think the code says 100-foot buffer, but it also talks about plantings and so forth. I think some plantings along the back of the residential lots and that 50 feet if the farmer wants to mow it as part of the agricultural buffer, I don't have a problem with that providing that we do these other things to mitigate and provide a real buffer. We need to provide a real buffer because we don't know if it would remain in hay.

Mr. Showalter: Dennis, I like that idea. Kirk, which drawing are we going to go with? At the workshop, there were two options.

Mr. McConnell: I think the consensus was that we would have the buffers being on the farm side rather than owned by the individual lot owners.

Kirk Rother: That was the original plan that we presented to the Board. At the workshop for that submittal, I changed the plan. I took the lot line of all these lots and extended them out 100 feet. I put the buffers in the shaded area here. It puts the buffer on the lots. My opinion is that it doesn't work as well on the whole spirit of this plan. I think it will be more of a difficult challenge to enforce.

Mr. McConnell: My proposal would be to plant plantings along the property line and have 50 feet there with a no-mow zone. As the code says, let it grow up and reforest to provide a natural buffer. That is what I would suggest.

Mr. Astorino: We would have a note to that effect on the plan. How does the rest of the Board feel?

Mr. Singer: Does your vision change if there are animals there?

Kirk Rother: What about horses?

Mr. Singer: There are horses there now.

Mr. McConnell: To change it in what way? I don't have an issue with the within 50 feet of the property line.

Kirk Rother: Should horses be penned 50 feet away or could it be 10 feet away?

Mr. Astorino: No. Now, that is where you are getting out of the spirit of the Ag buffer.

Mr. McConnell: The no-mow zone is part of the buffer. There would be nothing going on there.

Mr. Astorino: Carl, if there is going to be livestock; they would have to have fences.

Mr. Showalter: The fence would be up to the farmer to put up.

Mr. Astorino: At such time. What Dennis had proposed to the Board, is that ok with the rest of the Board?

Mr. Singer: We have to talk about what this vegetation would be.

Mr. Astorino: It would be to the Town Planner's specifications. Ted, would you take care of that?

Mr. Fink: Yes.

Mr. Bollenbach: Does the Board want the no-mow strip or not?

Mr. McConnell: Yes.

Mr. Astorino: Yes. The 50-foot strip would be fine.

Mr. Bollenbach: We will add a comment #23, "Provide buffer with landscape to the Town Planner's specifications with a 50-foot no-mow strip. Provide dedication and map notes."

Mr. Astorino: Ok.

**YIELD PLAN (REVISED 1/10/2005)**

Comment #3: No further comment. Board reached consensus on the Yield Plan on July 6, 2005.

**CLUSTER PLAN (REVISED 4/10/2008)**

Comment #4: Revise proposed Town road typical section per the road pavement design.

Kirk Rother: Right. We will do that.

Comment #5: Provide landscaping at the border of the agricultural buffer per the Town Planner's specifications. Provide Agricultural Buffer Notes to the Planning Board Attorney's specifications.

Mr. Astorino: We have that.

Comment #6: Provide supplemental screening landscaping, to the Town Planner's specifications, on Lots 1 and 12.

Mr. Astorino: That is the Fishers.

Kirk Rother: Correct.

Comment #7: Place a Private Road Note on the plans, to the Planning Board Attorney's specifications.

Kirk Rother: Will do.

Comment #8: Regarding Special Condition 100 (§164-46J(100)) – Affordable Housing: Applicant has submitted renderings, construction standards, and a marketing plan. Board to discuss.

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

Mr. McConnell: I am happy with the way it is.

Mr. Astorino: We are set with the Marketing Plan as is as the Town Board accepted it.

Mr. Bollenbach: On comment #8, take out, Board to discuss.

Zen Wojcik: Comment #12 is a duplicate comment of that.

Mr. Bollenbach: Ok. We could strike comment #12.

Comment #9: Consistently label open space, not conservation easement.

Kirk Rother: Will do.

Comment #10: Applicant is requesting a special approval for a maximum road grade of 14% on Private Road 'B'. Board to consider.

Kirk Rother: We presented this to the Board at the workshop. We could minimize the earthwork on Road B, if the waiver is granted.

Mr. McConnell: Reduce the cuts and fills.

Kirk Rother: Ok. We will reduce the cuts and fills.

Mr. Astorino: Is the Board ok with that?

Mr. McConnell: Yes.

Mr. Kowal: Yes.

Comment #11: Extend property lines for lots along Private Road 'B' to centerline of road.

Kirk Rother: Will do.

Mr. Bollenbach: I want to bring this to the Board's attention. It is just the public roads that currently appear on the subdivision maps. I think it would be beneficial to have the private roads appear on the maps so you could see where there is a road or where these ROW exists. That is something we have to resolve. It is not done with our Assessor. It is done with the County's Tax Map office. However that gets resolved, the lots would either extend to the edge of the ROW or to the middle of the road. I can't give you an answer yet. We will add to comment #11, to the Planning Board Attorney's specifications.

Comment #12: Town Board has approved the marketing plan (revised 4/8/08) for affordable housing. Per §164-46J(100)(g), Planning Board to consider.

Mr. Astorino: We will strike comment #12. We have that in comment #8.

**BEFORE FINAL APPROVAL**

Comment #13: Surveyor to certify that iron rods have been set at all property corners and stone cairns have been set at corners of open space.

Kirk Rother: Ok.

Comment #14: Provide copies of the NOI and the signed final SWPPP.

Kirk Rother: Yes.

Comment #15: Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Private Road Notes, Private Road and Stormwater Management Facilities Use and Maintenance Agreement Notes, Open Space Notes, Radon Reduction Notes, and Affordable Housing Notes.

Kirk Rother: Ok. That will be to the Planning Board Attorney's specifications.

Mr. Bollenbach: Yes.

Comment #16: Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.

Kirk Rother: Correct.

Comment #17: Provide irrevocable offer for road dedication for Road "A" for the Town Board's approval. Propose an acceptable road name and place on plans. Provide for the Planning Board Attorney's review, legal descriptions of dedication strip, drainage easements, stub road, and temporary cul-de-sac.

Kirk Rother: Will do.

Comment #18: Applicant to provide 9-1-1 addressing.

Kirk Rother: Yes.

Comment #19: Pay parkland fees.

Kirk Rother: Yes.

Comment #20: Pay construction inspection fee and performance bond for proposed Town road, private road, Town road realignment, stormwater management facilities, and erosion control.

Kirk Rother: Ok.

Comment #21: Pay a three-year landscape maintenance bond for stormwater pond landscaping, roadbed reclamation at Newport Bridge/Blooms Corners Roads intersection and street trees.

Mr. Astorino: John, should mitigation landscape be in there?

Mr. Bollenbach: Yes.

Comment #22: Pay outstanding review fees.

Kirk Rother: Yes.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §A168 Appendix E ¶B (4) | Private road – special approval for maximum 14% grade. |
| | |

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

Mr. Singer: I have a comment on comments 8 and 12 that is in reference to the Marketing plan for the Affordable Home. I like to thank the applicant and the Town Board for the revisions made from the previous Marketing Plan that we had. I think this was brought more in line with the code. I appreciate the Town Board and the applicant for taking care of that problem. Thank you.

Kirk Rother: So noted.

Mr. Bollenbach: I wanted the Board to discuss the stormwater management facilities. They appear on the open space areas. They will be the ongoing responsibility of the owners of those respective open space areas.

Kirk Rother: Correct.

Mr. McConnell: Would that appear on their deeds?

Kirk Rother: It would be part of the maintenance agreement.

Mr. Bollenbach: That would also be as a map note. It will also be right in the deeds. There will be a backup Drainage District formed. If the Town encounters difficulties in the maintenance of that, the Town Board would have the option to activate that Drainage District and assess all individual owners. In this particular case, there is no need for a HOA. There is a private road that would serve a limited number of lots. Kirk, how many lots is that?

Kirk Rother: That would be for 6 lots.

Mr. Bollenbach: That private road would serve 6 lots. There would be no unique drainage features or facilities directly related to that edge of the road.

Mr. Astorino: Ok. Does the Board have any further comments? This is a public hearing. If there is anyone in the audience wishing to address the Masanda-Luft Properties application, please rise and state your name for the record.

Nancy Owen: Did you now decide that the buffer would be on the individual homeowners?

Mr. Astorino: No. It is going to stay within the farm.

Nancy Owen: Ok. What is a Drainage District?

Mr. Bollenbach: The Drainage District is a mechanism that the Town has been utilizing for the last 7 or 8 years. It would be like any other district that would be formed. We have a Sewer District that we just adopted. There is the Bellvale Water District and Drainage District. There is also a HOA that we quite frequently refer to. Basically, there is some type of a maintenance agreement or a HOA to maintain the SWPPP facilities on the property. In the event that it is not maintained by the HOA or by the individual homeowners, the Town has an enforcement right to have that bid out and added to the tax bills. The other option is to have a Drainage District. On a regular annual basis, the Town will contract for the maintenance of those facilities. It automatically gets put on the homeowner's bill.

Nancy Owen: Ok. Thank you.

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

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

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

Mr. McConnell makes a motion to grant a waiver §A168 Appendix E Private road – special approval for maximum 14% grade.

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

Mr. Showalter makes a motion on the Masanda-Luft Properties, LLC., application, granting final approval of a proposed 22-Lot cluster subdivision + 2-Affordable Homes subdivision and special use permit for the affordable homes, entitled ***"Kenneth Luft Subdivision",*** situated on tax parcel S 26 B 1 L 110; parcel located on the northern side of Newport Bridge Road and at the intersection with Blooms Corners Road, in the RU zone of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Revise proposed Town road typical section per the road pavement design.
2. Provide landscaping at the border of the agricultural buffer per the Town Planner's specifications. Provide Agricultural Buffer Notes to the Planning Board Attorney's specifications.
3. Provide supplemental screening landscaping, to the Town Planner's specifications, on Lots 1 and 12.
4. Place a Private Road Note on the plans, to the Planning Board Attorney's specifications.
5. Regarding Special Condition 100 (§164-46J(100)) – Affordable Housing: Applicant has submitted renderings, construction standards, and a marketing plan.

6. Consistently label open space, not conservation easement.
7. Applicant is requesting a special approval for a maximum road grade of 14% on Private Road 'B'. Board to consider.
8. Extend property lines for lots along Private Road 'B' to centerline of road to Planning Board Attorney's specifications.
9. Surveyor to certify that iron rods have been set at all property corners and stone cairns have been set at corners of open space.
10. Provide copies of the NOI and the signed final SWPPP.
11. Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Private Road Notes, Private Road and Stormwater Management Facilities Use and Maintenance Agreement Notes, Open Space Notes, Radon Reduction Notes, and Affordable Housing Notes to Planning Board Attorney's specifications.
12. Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.
13. Provide irrevocable offer for road dedication for Road "A" for the Town Board's approval. Propose an acceptable road name and place on plans. Provide for the Planning Board Attorney's review, legal descriptions of dedication strip, drainage easements, stub road, and temporary cul-de-sac.
14. Applicant to provide 9-1-1 addressing.
15. Pay Parkland Fees.
16. Pay Construction Inspection Fee and Performance Bond for proposed Town road, Private road, Town road realignment, Stormwater Management Facilities, and Erosion control.
17. Pay a Three-Year Landscape Maintenance Bond for Stormwater Pond Landscaping, Roadbed reclamation at Newport Bridge/Blooms Corners Roads intersection and street trees and mitigation plantings.
18. Pay Outstanding Review Fees.

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

Kirk Rother: On behalf of the Lufts, they thank you. Thank you very much.

**PUBLIC HEARING OF Estate of Baum c/o Kary Jablonka, Executor/Dayspring Community School, Inc., c/o Lee A. Squires-Sussman**

Application for preliminary approval of a proposed 11-Lot cluster subdivision (9-New Residential Lots), entitled ***"Lands of Dayspring-Baum",*** situated on tax parcels S 31 B 2 L 2 and L 8; parcels located on the southerly side of West Ridge Road 1000+ feet west of Route 94 and 17A in the MT zone, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the March 19, 2008 Planning Board meeting.

Representing the applicant: Kirk Rother, Engineer.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.

**YIELD PLAN (6/25/03, LAST REVISED 4/10/08)**

3. On the Board accepted Yield Plan (consensus on December 19, 2007), the proposed septic system for Yield Lot #3 was within the 100-foot wide agricultural buffer (adjacent to SBL 31-2-66.2). Additional percs and deeps were witnessed at an alternative site, resulting in the location of a suitable absorption field in a location outside the agricultural buffer, as shown on the revised plan. Board to consider revised Yield Plan.

**CLUSTER PLAN (11/9/04, LAST REVISED 3/25/08)**

4. Board to discuss special approval of 14% roadway grade (Appendix E, ¶B(4)).
5. The applicant will revise and/or supplement the Geotechnical Soil Evaluation Report with an additional discussion proposing the method of shallow rock cut excavation, including an estimate of the amount of material to be so removed and the duration of the removal process,
6. A Blasting Plan, revised per the Town Engineer's comments, has been submitted. Board to consider.
7. Provide Agricultural Buffer Notes to the Planning Board Attorney's specifications.
8. The applicant proposes supplementary drainage facilities along West Ridge Road. Provide calculations showing that the facilities are sufficient for the amount of projected road runoff combined with the outfall from Water Quality Pond 2A. Clarify the proposed grading along the road and at the outlet of Road A. Nyloplast drainage structures are not acceptable for use in Town roads. Revise, using precast concrete structures.
9. Remove the reference to Lot 1 from Driveway Note 3. The condition of the Lot 1 driveway is included in the concurrent Site Plan & Special Use Permit application for the Dayspring School. However, include a note in the Driveway Notes that the first 25 feet of the Lot 1 driveway are to be paved and provide a detail for improving the management of driveway runoff at Old Ridge Road.
10. Revise lot lines along private road to extend to centerline of road.
11. Provide a chain-link fence along the Sanford property to prevent future trespass. Include construction details on plans.
12. Applicant requests a waiver from Ridgeline Overlay District restriction on building height, allowing 35 foot height.

**BEFORE FINAL APPROVAL:**

13. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Private Road and Drainage Use and Maintenance Agreement Notes, Open Space Notes and Drainage Easements.
14. Applicant to provide a dedication strip on West Ridge and Old Ridge Roads, notes for temporary cul-de-sac, and stub road for the Planning Board Attorney's review.
15. Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.
16. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns at corners of open space.
17. Applicant to provide signed and sealed copy of the final revised SWPPP including a copy of the submitted NOI.
18. Provide 9-1-1 addressing.
19. Pay parkland fees.
20. Pay performance bond and construction inspection fee for road, stormwater management facilities, and erosion control. Pay 3-year landscape maintenance bond for mitigation, Ridgeline Overlay, screening and stormwater management facility plantings.
21. Pay outstanding review fees.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §A168 Appendix E ¶B (4) | Private road – special approval for maximum 14% grade. |
| §164-47.1F(2) | Ridgeline Overlay District – waiver from building height restriction, allowing maximum height of 35 feet. |

The following comment submitted by the Conservation Board, dated 4/16/08:

Dayspring-Baum Subdivision - The CB is opposed to granting a waiver of the Ridgeline Overlay District requirements. The CB supports the waiver for a 14% grade if it reduces the amount of cut and fill similar to the Luft subdivision. The present layout should be review with a view toward minimizing further the impact on the wetlands. Aesthetically a post and rail fence if preferable to chain link, but if chain link is to be used, then it should be in a dark green or black color to lessen visual impact.

The following comment submitted by the ARB, dated 4/16/08:

Dayspring-Baum Subdivision - According to the plans we received, the stub road (while only a paper road) ends at the jointly shared driveway on lots 10 and 11. If this ever were to be developed, it meets with at least the community-owned road and cul-de-sac.

The ARB would like to again register that this development with its balkanized open space, is simply a "gerrymander" to achieve yield in what is essentially a typical suburban neighborhood.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has been acting as Lead Agency on this application using the long EAF. It is an Unlisted Action. I have prepared a Draft Negative Declaration for the Board to consider. The issues that we had raised and addressed under SEQR were the issue of farming. This involves two parcels. One parcel is the school parcel. The other parcel has been farmed in the past. The property is within an agricultural area. Map notes have been

shown on the subdivision plan. There is an active farm that adjoins the site. The agricultural buffer was an issue that has been addressed under SEQR. The parcel is also located within the Town's Ridgeline Overlay Protection District. We have a Visual EAF Addendum and a Post Development Visual Analysis prepared with a Line of Sight Analysis. The property is not on a scenic road, but I believe based upon the EAF there are no other issues related to the visual impacts. We do have the need for softening some of the potential impacts to adjoining properties as well as West Ridge Road because of the cut that would have to be made for the proposed entrance road. The applicant has addressed that through landscaping of evergreens to try to soften the whole impact issue there. There are Federal wetlands on the site. There will be no direct impacts on those Federal wetlands. We have potential with any wetland of indirect impacts as a result of impervious surfaces, stormwater runoff, and so forth. The applicant has completed a Stormwater Pollution Prevention Plan (SWPPP) and a soil erosion sediment control plan. We have those plans.

Comment #2: Applicant to discuss project.

Kirk Rother: The Board is familiar with the project. Since the last meeting, there were a couple of items that needed to be addressed. The Town had asked us to look at an existing drainage concern on West Ridge Road. We did do that propose a drainage scheme. Given that I was tied up the last 2 weeks, I didn't have a chance to meet with the Commissioner prior to our submittal. But, I did meet with the Assistant Deputy Commissioner and Ed Butler before tonight. I believe we have mutually agreed as to how we would resolve the drainage issue on West Ridge Road. It is very close to what I have proposed on the plan. The yield plan, this 100-foot agricultural buffer with no clearing reared its head; we have done additional soil testing with Tectonic. We have relocated the septic system on the yield plan on lot 11 and also on the cluster plan on lot 2. There is now no disturbance of the agricultural buffer on either the yield plan or the cluster plan. We have made some revisions to the blasting notes that Zen had asked for. You are in receipt of that.

**YIELD PLAN (6/25/03, LAST REVISED 4/10/08)**

Comment #3: On the Board accepted Yield Plan (consensus on December 19, 2007), the proposed septic system for Yield Lot #3 was within the 100-foot wide agricultural buffer (adjacent to SBL 31-2-66.2). Additional percs and deeps were witnessed at an alternative site, resulting in the location of a suitable absorption field in a location outside the agricultural buffer, as shown on the revised plan. Board to consider revised Yield Plan.

Mr. Astorino: Do we have a consensus on the revised yield plan?

Mr. McConnell: Yes. I am happy with it.

Mr. Kowal: Yes.

Mr. Showalter: Yes.

Mr. Astorino: Ok. We have a consensus on the revised yield plan.

**CLUSTER PLAN (11/9/04, LAST REVISED 3/25/08)**

Comment #4: Board to discuss special approval of 14% roadway grade (Appendix E, ¶B(4)).

Mr. Astorino: That is regarding to the cuts and fills.

Kirk Rother: It has been that way for 2 years now.

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

Mr. McConnell: What has been what way for 2 years?

Kirk Rother: The proposed 14% roadway grade.

Mr. McConnell: Ok.

Comment #5: The applicant will revise and/or supplement the Geotechnical Soil Evaluation Report with an additional discussion proposing the method of shallow rock cut excavation, including an estimate of the amount of material to be so removed and the duration of the removal process.

Kirk Rother: Yes.

Comment #6: A Blasting Plan, revised per the Town Engineer's comments, has been submitted. Board to consider.

Mr. Bollenbach: That will be for the Board's review. We could discuss it at a work session.

Mr. Astorino: Yes. This is just preliminary.

Comment #7: Provide Agricultural Buffer Notes to the Planning Board Attorney's specifications.

Kirk Rother: Will do.

Comment #8: The applicant proposes supplementary drainage facilities along West Ridge Road. Provide calculations showing that the facilities are sufficient for the amount of projected road runoff combined with the outfall from Water Quality Pond 2A. Clarify the proposed grading along the road and at the outlet of Road A. Nyloplast drainage structures are not acceptable for use in Town roads. Revise, using precast concrete structures.

Mr. Astorino: We discussed that.

Kirk Rother: Will do.

Comment #9: Remove the reference to Lot 1 from Driveway Note 3. The condition of the Lot 1 driveway is included in the concurrent Site Plan & Special Use Permit application for the Dayspring School. However, include a note in the Driveway Notes that the first 25 feet of the Lot 1 driveway are to be paved and provide a detail for improving the management of driveway runoff at Old Ridge Road.

Kirk Rother: Ok.

Comment #10: Revise lot lines along private road to extend to centerline of road.

Mr. Bollenbach: That is to be determined.

Comment #11: Provide a chain-link fence along the Sanford property to prevent future trespass. Include construction details on plans.

Mr. Astorino: We will discuss that. Mr. Singer, we will get through that.

Comment #12: Applicant requests a waiver from Ridgeline Overlay District restriction on building height, allowing 35 foot height.

Mr. Astorino: We need the Line-of-Sight Analysis.

Kirk Rother: You have that already.

Mr. Fink: Yes. We do have that.

Mr. Bollenbach: We have a comment from the CB, dated 4/16/08. Ted, do you want to comment on that? It seems that the CB has difficulty understanding this particular concept. This is in regards to that they are opposed to granting a waiver of the Ridgeline Overlay District requirements. I believe it is regarding the 35-foot height requirement. It is up to the applicant to demonstrate it with a Visual EAF and Line-of-Sight profiles that the proposed height would not have an adverse visual impact. If so, there would be additional plantings and different mitigation factors that are taken into consideration. Ted, do you have anything?

Mr. Astorino: We have done that in the past.

Mr. Fink: John, that is exactly the purpose of what that is. In the Ridgeline Overlay area, we would impose a 25-foot building height unless it could be proven that it would not be visible from public viewing locations. The applicant has done that through their Line-of-Sight analysis.

Mr. Astorino: Ok.

**BEFORE FINAL APPROVAL:**

Comment #13: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Private Road and Drainage Use and Maintenance Agreement Notes, Open Space Notes and Drainage Easements.

Kirk Rother: Ok. Mr. Chairman, we are ok with the rest of the final comments.

Mr. Bollenbach: While we are still on comment #13, I wanted to bring up that perhaps there might be a HOA that the Board might want to consider prior to final. This application is quite similar to the Sleepy Valley subdivision application. In that particular case, the applicant was required to put drainage structures in the Town road. It remained the responsibility of the HOA to maintain those structures. It is similar to West View Estates/Pelton Crossing for their drainage improvements that were put in place on the Town's property. It is the HOA responsibility to maintain them. This is something that has to be resolved prior to final. It doesn't have to be done now. It is something to think about.

Mr. Astorino: Ok. Zen, are there any comments here that you see outstanding?

Zen Wojcik: No.

Mr. Astorino: Ok. We will list comments 14 through 21 for the record. Do any Board members have any comments?

Comment #14: Applicant to provide a dedication strip on West Ridge and Old Ridge Roads, notes for temporary cul-de-sac, and stub road for the Planning Board Attorney's review.
Comment #15: Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.
Comment #16: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns at corners of open space.
Comment #17: Applicant to provide signed and sealed copy of the final revised SWPPP including a copy of the submitted NOI.
Comment #18: Provide 9-1-1 addressing.
Comment #19: Pay parkland fees.
Comment #20: Pay performance bond and construction inspection fee for road, stormwater management facilities, and erosion control. Pay 3-year landscape maintenance bond for mitigation, Ridgeline Overlay, screening and stormwater management facility plantings.
Comment #21: Pay outstanding review fees.

**WAIVERS & EXEMPTIONS**

| ***CODE*** | ***ACTIVITY*** |
|---|---|
| §A168 Appendix E ¶B (4) | Private road – special approval for maximum 14% grade. |
| §164-47.1F(2) | Ridgeline Overlay District – waiver from building height restriction, allowing maximum height of 35 feet. |

Mr. Singer: In comment #11, it states; provide a chain-link fence along the Sanford property to prevent future trespass. On the map, I see a stonewall along lot 2 and the open space. I don't think an ATV is going to get past a stonewall. On lot 11, I see that they have an existing electric fence. The stonewall continues on the other 2 lots. The only lot that is exposed is the lot with their fence. It is only accessed by lot 11. Nobody else has access, unless they trespass across lot 11 into the Sanford property. I don't see any need for a fence there. To fence across one property is ridiculous. There is a fence there already.

Mr. Fink: Do we know the condition of the stonewall?

Mr. Astorino: The Sanford's are here from that site. I think we will get a good indication of what is there or not there.

Mr. Bollenbach: Just for the Board's information. This is a preliminary approval. Determination does not have to be made this evening. It could be taken into consideration.

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

Mr. McConnell: I have to admit that at the time the fence was first addressed, I wasn't thinking it would be the responsibility of this developer to put it in and maintain it. Perhaps for different reasons, I concur with Mr. Singer requiring the developer of putting in a fence along here. I reserve until we have the chance to discuss it more fully. My initial position is that I don't see it.

Mr. Bollenbach: I just want to touch upon that one particular issue as to whose responsibility it is. It is identified in the SEQR documentation that if there is potential impact, it would be up to the applicant to provide a mitigation proposal for the Planning Board's review. Again, on a case-by-case basis, just keep an open mind.

Mr. Singer: This would not have an impact because it is a heavily wooded area. ATV's wouldn't be able to get through there.

Mr. Astorino: Do any other Board members or Professionals have any other comments. This is a public hearing. If there is anyone in the audience wishing to address the Dayspring-Baum application, please rise and state your name for the record.

John Sanford: I would like to address the Board about this ATV issue. Have you been up there to look at the property?

Mr. Singer: No.

John Sanford: Ok. Maybe, we should take a little visit up there. The stonewall fence is not that high. It is about knee high. It is just a line fence. In many cases, the stones are just thrown there. What we find with stonewall fences is that they don't last very long when there is a development. You would be surprised by how fast the stones disappear. As far as the stonewall being a barrier, I don't think it would be. Our property is all opened. The Baum property is all wooded. There is no question about that. We already see these ATV's coming up the pipeline from neighboring properties over to our property. We have snowmobiles and ATV's coming through. I think we will see more of this happening as time goes on. I think you have a property coming up called the Myruski Farm. They are also going to have the same problem. I spoke to Mr. Myruski today. He also has a concern about this thing. Wisner Buckbee is another farmer who you will be working on with shortly. He is also concerned. As Wisner pointed out, he mentioned that many people who come from the city are use to parks. Parks are for everyone. Sometimes when you have farmland, it really isn't for everyone to use. We don't have trails on it. In our particular case, it is all pasture. It will be fenced. There is no fence up there now. The fence doesn't go up quite yet to the pipeline.

Mr. Singer: I thought there was an electric fence.

John Sanford: No. There is no electric fence up there at all. It is completely empty. The only thing that you have is a stonewall that goes part way down.

Mr. Showalter: I thought that Dottie had said there was an electric fence.

John Sanford: No. There will be an electric fence. That was what we were worried about. What we have is that our electric fence goes up part way. We plan to extend that fence as we build that ground up. We want to extend that fence all the way around. There is no fence there now. There will be a fence. That was what our concern was. All of a sudden, we will have an electric fence going up. If you have people riding in an ATV and crashing into that fence, we would have a real problem. That is our concern. Carl, or any other Board members, if you would like, we could go take a walk up there. I would like you to take a look at it and see what you would think.

Mr. Astorino: I think that would be a very good idea.

Mr. McConnell: Yes.

Mr. Astorino: Give Connie your number. The Planning Board could take a Saturday or something to go there.

John Sanford: Sure.

Mr. Bollenbach: We could discuss a date at the 4/28/08 work session.

John Sanford: Ok. You discuss it at the work session on when it would be good for you. Let me know.

Kirk Rother: I don't know if it is appropriate or not, but I need to ask. If we do decide to put up a fence, there was talk about two types. We proposed a fence that we had done on other projects where it was a split-rail wood fence with a wire mesh attached to it. At the Planning Board meeting, there was a discussion about if it should be something more robust like a chain-link fence. I don't know if it would be attractive to do that. Do you think a split-rail wood fence with the wire on it would be adequate? Or, would we need to do a chain-link fence?

Mr. Bollenbach: John, take a look at one of the details.

Kirk Rother shows John Sanford and Dottie Rinaldi the details of the fence that he had just discussed.

Dottie Rinaldi: Here is our other concern regarding the electric fence. If someone touches the electric fence, it would hurt a lot. We are looking to protect the people and kids. You have curious kids that roam around the farm. We just don't want anybody to get hurt. Regarding the split-rail fence, if there was some way to make it tall enough so that it would not be climbable. We could put signs all over the place. People don't pay attention to signs. We are trying to be proactive so that nobody gets hurt.

Mr. Showalter: I think they would learn if they were zapped by an electric fence. Kids with ATV's would say, we better stay away from that.

Mr. McConnell: What I am hearing are 2 different concerns. The first concern that we had heard about was to prevent ATV's from coming onto the property. That requires one type of a fence. Now, I what am hearing your say is that you want to prevent people from coming on foot.

Dottie Rinaldi: That was because of the wire fence.

Mr. McConnell: A 4-foot high chain-link fence isn't going to prevent people from climbing over it. I think what we have here is a police issue not a Planning Board issue.

Dottie Rinaldi: The only thing with that is in terms of being proactive; I rather not deal with that. Police are trained to deal with emergencies. Police don't come very rapidly to investigate when it is not an emergency. I don't think it is that much of an emergency for police to track down trespassers. I know that it is their job to do so. But, it is not on the top of their top 10 list. I think the police are necessary for other things. We are not up there 24/7 to check this out. It is a challenge for kids to go over the rock walls with their ATV's. They make tracks all over. It is a big deal to us, but to the police it might not be.

Mr. McConnell: All that I am saying is that enforcement of trespass laws is not within the purview of this Board.

Dottie Rinaldi: But, being proactive is.

Mr. Astorino: I think we should do a site visit out there. I heard Carl's opinion and the other Board members opinions on this matter. I think just to say it, as across the Board, I don't agree with that. I think we should take a look at it. We will discuss this at the 4/28/08 work session. We will get out there and take a look at this. We will see if it would harm people or not. John, we will discuss this on 4/28/08 at the work session and set a time up for a site visit. We will get back to you on it.

John Sanford: Ok. Thank you.

Connie Sardo: John, give me a call the day after the work session on 4/29/08. I will let you know when that site visit will be.

John Sanford: Ok.

Dottie Rinaldi: Thank you.

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

Mr. Showalter: We have a comment from the ARB, dated 4/16/08. Does anybody understand their comment?

Mr. Bollenbach: The ARB comment is so noted for the record.

Mr. Showalter: We have a comment from the CB, dated 4/16/08.

Mr. Astorino: We had discussed the visual EAF height restrictions as we have done in the past. It is in the code. That is something we will take care of.

Mr. McConnell makes a motion for the Negative Declaration.

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

617.12(b)

**State Environmental Quality Review (SEQR)**

Resolution Authorizing Filing of Negative Declaration

**Name of Action**: Dayspring-Baum Subdivision

**Whereas**, the Town of Warwick Planning Board is the SEQR Lead Agency for conducting the environmental review of a proposed 11 lot subdivision, Town of Warwick, Orange County, New York, and

**Whereas**, there are other involved agencies pursuant to SEQR, and

**Whereas**, the Planning Board has reviewed an Environmental Assessment Form (EAF) for the action dated 11/24/04, 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. McConnell makes a motion to close the public hearing.

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

Kirk Rother: I just want to make the Board aware of something. If the Planning Board grants preliminary approval, the next step will be the Board of Health. We still have a long way to go with you. You will have plenty of time to resolve these issues that we have spoken about.

Mr. Singer: Kirk, do you want to come with us on this site visit?

Kirk Rother: Yes.

Mr. Singer: Ok.

Mr. Astorino: We will let you know.

Mr. Showalter makes a motion on the Estate of Baum c/o Kary Jablonka, Executor/Dayspring Community School, Inc., c/o Lee A. Squires-Sussman application, granting preliminary approval for a proposed 11-Lot cluster subdivision (9-New Residential Lots), entitled ***"Lands of Dayspring-Baum",*** situated on tax parcels S 31 B 2 L 2 and L 8; parcels located on the southerly side of West Ridge Road 1000+ feet west of Route 94 and 17A in the MT zone, of the Town of Warwick, County of Orange, State of New York.

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

Kirk Rother: Thank you.

**PUBLIC HEARING OF Christopher and Cynthia Schenk**

Application for final approval of a proposed lot line change, situated on tax parcels S 54 B 1 L 11.1 and 11.2; parcels located on the southeastern side of NYS Route 17A 840 feet south of Ketchum Road in the RU zone, of the Town of Warwick, County of Orange, State of New York.

Representing the applicant: Kirk Rother, Engineer. Chris Schenk, applicant.

Connie Sardo: Mr. Chairman, we have received the certified mailings for the Schenk public hearing.

Mr. Astorino: Thank you.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
   A. Planner to discuss line-of-sight profile.
2. Applicant to discuss project.
3. Show on the plan the type of lighting fixtures at the pond, driveway entrance and driveway. Show that they comply with the Town Code.
4. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.
5. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Notes, and Common Driveway Use and Maintenance Agreement Notes.
6. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 4/16/08:

Christopher and Cynthia Schenk - The CB has would like to see visual impact of this house since it is in the Ridgeline Overlay District.

The following comment submitted by the ARB, dated 4/16/08:

Christopher and Cynthia Schenk – The ARB had no comments.

Comment #1: Board to discuss SEQR.
A.) Planner to discuss line-of-sight profile.

Mr. Fink: The applicant has submitted a short EAF. It is an Unlisted Action. There are no other agencies involved. The Planning Board could go ahead and declare Lead Agency.

Mr. McConnell 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: Schenk Re-Subdivision

Whereas, the Town of Warwick Planning Board is considering action on a proposed Subdivision application by Christopher and Cynthia Schenk for a ± 26 acre parcel of land located at 186 NYS Route 17A, Town of Warwick, Orange County, New York, and

Whereas, an Environmental Assessment Form (EAF) dated 2/13/08 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 not within an agricultural district and, therefore, the requirements of 6 NYCRR 617.6(a)(6) do not apply , 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.

Kirk Rother: This application is for a proposed lot line change between two existing parcels that were created on a subdivision map some years ago. We are looking to convey approximately 3.5 acres from tax parcel S 54 B 1 L 11.1, which has an existing dwelling to tax parcel S 54 B 1 L 11.2, which has a dwelling currently under construction.

Comment #3: Show on the plan the type of lighting fixtures at the pond, driveway entrance and driveway. Show that they comply with the Town Code.

Kirk Rother: Ok.

Comment #4: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.

Kirk Rother: Yes.

Comment #5: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Notes, and Common Driveway Use and Maintenance Agreement Notes.

Kirk Rother: Yes.

Comment #6: Pay outstanding review fees.

Kirk Rother: Ok.

Connie Sardo: Mr. Chairman, you missed comment # 1-A.

Mr. Astorino: I'm sorry. Comment #1-A, Planner to discuss line-of-sight profile.

Mr. Fink: The applicant has asked for the waiver to allow the building to be up to the 35-foot limitation imposed by the zoning. This is located within the Ridgeline Overlay District. They have provided us with a line-of-sight profile. There is quite a distance involved from Route 17A to the proposed residence. It does show that there is existing vegetation that would block the view of the dwelling whether it was 25 feet or 35 feet high from Route 17A.

Mr. Singer: Is that existing vegetation?

Mr. Fink: Yes. It says the approximate tree height, existing grade, and approximate tree canopy.

Mr. Singer: I went by there last week. I had seen that some vegetation had been removed. Does that change the line-of-sight?

Mr. Fink: No.

Mr. Showalter: The vegetation that was removed, was that stuff that fell down from the ice-storm?

Chris Schenk: Some of it was.

Kirk Rother: What you could see from the road, Mr. Schenk has a building permit for the existing residence. This proposed dwelling is 1000 feet back.

Mr. Singer: That was where trees were removed. It is behind the tennis court.

Chris Schenk: Correct. I have a building permit for this residence. We haven't dug yet. We do have a permit for that for the clearing.

Mr. Bollenbach: Ted, do you want to double-check that?

Mr. Fink: Yes.

Mr. Bollenbach: We could add a comment #8, provide supplemental landscaping to the Town Planner's specifications.

Mr. Showalter: I think we had seen that line-of-sight profile that Kirk had prepared at the work session. I thought it was sufficient.

Kirk Rother: The objective in preparing the line-of-sight profile is to look at the placement of the house on the overall landscape. On that section that we show, you could see that within the 1600 feet that I mapped, the hill continues to go up behind the house to an elevation that would be above the house, if the house were 35 feet high. The house does not sit on a ridge. It does not project out beyond the ridge. It is set into the ridge. There are several hundred feet of trees in front of it.

Mr. Astorino: The question is where the line-of-sight profile shows the trees. Have any of that been cleared along that line?

Chris Schenk: No. It was only cleared in the home site area.

Kirk Rother: Right. I show a gap of the trees where it was cleared. There are woods in the front and back. The existing grade continues to rise.

Mr. Fink: Carl does have a point. Where the trees are shown, is that on the adjoining property the other property that is involved in this application? Would that landowner be able to clear the trees?

Chris Schenk: No. The proposed new property line behind the pond is grass. There are no trees there anyway.

Kirk Rother: Ted, I show it on station 650.

Mr. Fink: Ok. Is it station 653.4? Is it right around there?

Mr. Bollenbach: Ted, would you like to field verify that?

Mr. Fink: Yes.

Mr. Astorino: Ok.

Mr. Showalter: Obviously, he has to remove some trees in order to build this house.

Mr. Astorino: Right.

Connie Sardo: Mr. Chairman, we have a Conservation Board comment, dated 4/16/08.

Mr. Astorino: Ok. We have the visual impact in the file. The CB could take a look at that. Do any Board members or Professionals have any comments?

Mr. Bollenbach: We need to add at comment #7. Provide a deed for the lot line change and provide the recording information on the map. Comment #8 will read, provide supplemental plantings to the Town Planner's specifications.

Mr. Astorino: This is a public hearing. If there is anyone in the audience wishing to address the Schenk lot line change, please rise and state your name for the record. Let the record show no public comment.

Mr. Showalter 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**: Schenk Re-Subdivision

**Whereas**, the Town of Warwick Planning Board is the SEQR Lead Agency for conducting the environmental review of a proposed re-subdivision, 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 2/13/08, 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. McConnell: Is it appropriate to close out SEQR if we are asking Ted to go out and field verify the line-of-sight?

Mr. Astorino: It could be a condition.

Mr. McConnell: John?

Mr. Bollenbach: That was just field verification for the line-of-sight. They have already provided a line-of-sight profile. If the Planner goes out and sees that some supplemental plantings are required, then it will be provided.

Mr. McConnell: I am just wondering if it is appropriate to close out SEQR in this situation.

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

Mr. Fink: We have done it before in situations involving mitigation plantings because it is part of the Zoning Law as well.

Mr. McConnell: Right.

Mr. Fink: The Negative Declaration did not address this issue specifically.

Mr. McConnell: I think we have an open issue here. I don't think it is appropriate.

Mr. Astorino: We have a line-of-sight profile in front of us that says it doesn't reflect the 35-foot height. That is not causing a concern. Now, if Ted goes out there…

Mr. McConnell: We also had some clearing that has happened. Don't forget that this is a situation that came to us because work started to be done and then they wanted to change the lot line. We are not going from Point A to Point B. We went from Point A to D, back to B. I am just concerned that we are going to box ourselves in.

Mr. Astorino: The only way we could box ourselves in, is if we don't cover ourselves. If Ted goes out there and there is mitigation plantings required…

Mr. McConnell: But, he is telling me that the Negative Declaration doesn't have the flexibility in it that you would ordinarily have.

Kirk Rother: We have no objections to amending the Negative Declaration.

Mr. Fink: Yes. We could amend the Negative Declaration tonight to have it include a section that the applicant has offered mitigation plantings if necessary.

Mr. McConnell: That is appropriate.

Mr. Astorino: We could do that.

Mr. Showalter: Let's do that. We don't want to hold up the applicant and their engineer.

Mr. Fink: What we could do is say that the site is within the Ridgeline Overlay District. A line-of-sight profile has been prepared. The Town Planner will conduct a field visit to verify whether or not if any additional plantings are necessary in accordance with the Ridgeline Overlay District requirements for mitigation plantings.

Mr. Astorino: Ok. That takes care of that.

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

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

Mr. Kowal makes a motion on the Christopher and Cynthia Schenk application, granting final approval for a proposed lot line change, situated on tax parcels S 54 B 1 L 11.1 and 11.2; parcels located on the southeastern side of NYS Route 17A 840 feet south of Ketchum Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Show on the plan the type of lighting fixtures at the pond, driveway entrance and driveway. Show that they comply with the Town Code.
2. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.
3. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Notes, and Common Driveway Use and Maintenance Agreement Notes.
4. Provide deed for lot line change and place recording information on map.
5. Provide supplemental plantings to Town Planners specifications, if required.
6. Pay Outstanding Review Fees.

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

Kirk Rother: Thank you.

**PUBLIC HEARING OF Fred Gangemi #2**

Application for *"Amended"* Site Plan Approval and Special Use Permit for the construction and use of a dock and house re-construction, situated on tax parcel S 74 B 5 L 49.1; located within "A Designated Protection Area" of Greenwood Lake, project located on the eastern side of Woodland Terrace (6 Woodland Terrace) 60± feet north of Forest Road, in the SM zone, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the 4/2/08 Planning Board meeting.

Representing the applicant: Dave Getz from Lehman & Getz Engineering. Jay Myrow, Attorney.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.

A. The reconstructed building foundation is not in the same location as shown on the approved plan; approximately 5 feet closer to the lake. Applicant proposes to reduce roof overhang as mitigation.

B. A permit was acquired from the DEC/ACOE for dock and bulkhead construction without getting the Town's approval for work within the lake's Designated Protection Area after the previous site plan was approved.

3. Concrete bulkhead was constructed as part of the dock, per the permit. As measured by the applicant's engineer, the bulkhead is significantly larger than what is shown and noted in the applicant's DEC permit. Provide As-Built details on the plans for the bulkhead to the Town Engineer's specifications.
4. FOR THE RECORD – The As-Built location of the reconstructed building foundation was verified and shown on a signed and sealed survey dated January 12, 2007 by Robert H. Schmick, L.S. The dimensions of the foundation were measured by Zenon Wójcik of the Town Engineer's office on April 3, 2008, and verified to be exactly or similar to the building approved by the Planning Board 7/19/06.
5. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 4/16/08:

Fred Gangemi #2 – CB has no further comments.

The following comment submitted by the ARB, dated 4/16/08:

Fred Gangemi #2 – ARB had no comments.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has been acting as Lead Agency. We have previously issued a Negative Declaration on this application. The only situation where the Board would reopen SEQR on this would be to either amend or rescind the Negative Declaration, if it was found that there was a change in the project that was so significant that it would have a potential to result in an adverse impact.

Comment #2: Applicant to discuss project.

A. The reconstructed building foundation is not in the same location as shown on the approved plan; approximately 5 feet closer to the lake. Applicant proposes to reduce roof overhang as mitigation.
B. A permit was acquired from the DEC/ACOE for dock and bulkhead construction without getting the Town's approval for work within the lake's Designated Protection Area after the previous site plan was approved.

Jay Myrow: The Board is familiar with the project. Let's go through the other comments first.

Comment #3: Concrete bulkhead was constructed as part of the dock, per the permit. As measured by the applicant's engineer, the bulkhead is significantly larger than what is shown and noted in the applicant's DEC permit. Provide As-Built details on the plans for the bulkhead to the Town Engineer's specifications.

Dave Getz: Will do.

Zen Wojcik: For the record, the permit that was obtained after the Gangemi's received their approval from the Planning Board without coming to the Planning Board for the permit showed a bulkhead that was 2 feet wide. The bulkhead is actually 10 feet wide. So, it is 5 times larger than what the bulkhead was supposed to be. The house is closer to the lake than it was supposed to be. I don't know what to make of this applicant.

Mr. Astorino: That is why they are back before the Planning Board.

Mr. Singer: Did you say that you don't know what to make of this application?

Zen Wojcik: I don't know what to make of this application.

Mr. Astorino: We know what is out there now. Is that correct?

Jay Myrow: Yes.

Mr. Astorino: That is why they are here in front of us. I don't know what more we could say.

Comment #4: FOR THE RECORD – The As-Built location of the reconstructed building foundation was verified and shown on a signed and sealed survey dated January 12, 2007 by Robert H. Schmick, L.S. The dimensions of the foundation were measured by Zenon Wójcik of the Town Engineer's office on April 3, 2008, and verified to be exactly or similar to the building approved by the Planning Board 7/19/06.

Mr. Astorino: Mr. Schmick was correct.

Comment #5: Pay outstanding review fees.

Jay Myrow: No problem.

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

Mr. McConnell: To the point of the bulkhead being significantly larger than what was approved, could someone answer me on something? Would this bulkhead have been approved if this had been on the application originally?

Zen Wojcik: I don't see any reason why not.

Mr. McConnell: Ok. It doesn't go over the lines. Would it have affected anything in terms of SEQR's Negative Declaration?

Mr. Fink: The fact was that there was a bulkhead proposed that was considered as part of the SEQR review process. The fact that it is larger, I don't know if that would affect the need for additional erosion control.

Zen Wojcik: We would have had to wait for them to obtain a permit before the Board would be able to vote on it. The permit was obtained within months of the Board voting on this.

Mr. Showalter: Zen, do you think it was a mathematical error that it was 5 times larger?

Zen Wojcik: The Gangemi's came before the Board and asked for something. The Board had made a judgment on that. They seem to be in total disregard of what the Board had said and what the DEC had said. I don't know if the Board is going to make some action tonight and if that would make a difference on what would happen here next week.

Mr. Astorino: Zen, this Board does not police on what the applicant does. If that is the case, the Building Department should be fully aware. Maybe, they should make a few frequent stops over there. I don't know what else this Board could do. They came back to us. We went through this application. It is what it is. We don't police these applications. It is not in the Board's purview to do so.

Mr. McConnell: Mr. Chairman, we have 2 significant differences from the applicant. It makes me now question whether other parts of the approval …

Mr. Astorino: We have reviewed it. The bottom line is that they have to go out there and be caught by the Building Department.

Mr. McConnell: Yes. I was just wondering if we should be recommending to the Building Department.

Mr. Astorino: That would not be a problem.

Mr. Singer: What Dennis is saying is that this applicant hasn't been forthcoming with accurate information. Now, they are saying that they are building a house that would be used seasonally only, not full time. He also said that it would not have any more bedrooms than what is previously there. I think all of that is questionable.

Mr. Astorino: That would be a Building Department issue. I don't know what more we could do.

Mr. McConnell: Right. I don't know what more else we could do. However, if Carl is suggesting that the use is different from what we approved, it comes back to us as why did we approve that?

Mr. Astorino: We didn't. We approved what was on the plans in front of us. That goes for every application.

Mr. McConnell: In my business dealings when I get to the point that I could no longer trust what is being told to me, you verify everything.

Mr. Astorino: We know what is out there. It has been verified.

Mr. McConnell: We don't know what is out there today because we did not go out there today.

Mr. Astorino: Again, the bottom line on this is that I don't know what more we could do.

Mr. Singer: Our hands are tied.

Mr. McConnell: I am just expressing the frustration.

Mr. Astorino: I think this application has been frustrating since day one. Hopefully, the applicant gets the point.

Mr. Bollenbach: I have 2 more comments to add. Comment #6, comply with the conditions of the prior approval. Comment #7, post engineering inspection fees.

Mr. Showalter: Maybe, Mr. Myrow could tell the applicant that he is pretty lucky that the Building Department didn't make him take the house down.

Jay Myrow: In terms of the bulkhead and dock, I went back today to a year ago and looked at my emails. One of the emails that I received from him more than a year ago explained that when he put his application into the DEC for his permit for the dock, after he had done that, he came to the Town and to the Village and asked if, he needed permits to construct the bulkhead and the dock. I believe that he had conversations with Zen and the initial information that he received from both was that we don't permit either. They both said that we don't permit.

Zen Wojcik: Jay, I have many people that come over with a dock question. When building a dock, if you are building towards the lake, it is outside of our jurisdiction.

Jay Myrow: That is correct.

Zen Wojcik: Anything landside within a designated protection area, you would have to come before the Planning Board.

Jay Myrow: He told me he went to the Village and filled out an application. He did it.

Zen Wojcik: We have had more than a few people brought before this Board because they went ahead and had done work without the benefit of this Board's approval. They were brought here because they were violated by the Building Department.

Jay Myrow: I am telling you that a year ago, I was told by my client that he came to the Town. They told him that he does not need a permit. He went to the Village. The Village told him that he was not within the Village. Then, he built it. I know that he had subsequent conversations with Zen after that. It is not like he ran off and built this thing. He did approach both areas.

Mr. McConnell: What you are telling us is that he told you that he approached both.

Jay Myrow: I believe Zen will confirm that he had conversations with him very early on.

Zen Wojcik: I remember conversations complaining about the neighbor's electric line.

Mr. Singer: It is irrelevant.

Mr. Astorino: I agree with you. It is very irrelevant. Does the Board or Professionals have anything further?

Zen Wojcik: Mr. Chairman, I would like to thank the Board for this discussion. Mr. Batz had told me that he does read the Planning Board minutes. It is important for the Board that if they had a concern for the Building Department to make that point.

Mr. Astorino: We could make that noted. A simple conversation with John would take care of that.

Zen Wojcik: This reinforces it that the Board is concerned. I know that he will read the minutes. He will take that to heart.

Mr. Astorino: John Batz does a good job. He will stay on top of it.

Mr. Showalter: John Batz is the best Building Inspector in the County.

Mr. Astorino: Do any Board members or Professionals have anything else? This is a public hearing. If there is anyone in the audience wishing to address the Gangemi #2 application, please rise and state your name for the record. Let the record show no public comment.

Mr. McConnell: Let the record further indicate what a surprise it is to this Board member considering the people we had at the last public hearing that were quite agitated about this application.

Mr. Singer: I think they came in and talked to someone in the Building Department.

Mr. Astorino: Ok. Ted, do we have to amend the Negative Declaration?

Mr. Fink: No. I don't think so at this point.

Mr. Astorino: So, we are set.

Mr. Fink: Yes. That would be totally at the discretion of the Board.

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

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

Mr. Kowal makes a motion on the Fred Gangemi #2 application, granting *Amended"* Site Plan Approval and Special Use Permit for the construction and use of a dock and house re-construction, situated on tax parcel S 74 B 5 L 49.1; located within "A Designated Protection Area" of Greenwood Lake, project located on the eastern side of Woodland Terrace (6 Woodland Terrace) 60± feet north of Forest Road, in the SM zone, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Concrete bulkhead was constructed as part of the dock, per the permit. As measured by the applicant's engineer, the bulkhead is significantly larger than what is shown and noted in the applicant's DEC permit. Provide As-Built details on the plans for the bulkhead to the Town Engineer's specifications.
2. Comply with Conditions of Prior Approval.
3. Post Engineering Inspection Fees.
4. Pay Outstanding Review Fees.

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

Mr. Astorino: You will need to have a conversation with your client. We don't want to see them back here again.

Jay Myrow: Thank you.

Dave Getz: Thank you.

**Review of Submitted Maps:**

***Susan Wheeler and Others / Cedar Ridge***

Application for Final Approval of a proposed 36-Lot cluster subdivision, entitled, **"Cedar Ridge",** situated on tax parcel S 7 B 2 L 51.2, and located along the south side of Wheeler Road approximately 1500 feet west of intersection with County Route 41, in the RU zone. Preliminary Approval was granted on 3/2/05. Previously discussed at the 4/4/07 Planning Board meeting.

Representing the applicant: Kirk Rother, Engineer.

The following review comment submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.
   A. Status of OCHD approval.

**YIELD PLAN – dated 5/8/03, last revised 7/29/03**

3. No further comments.

**CLUSTER PLAN – dated 3/31/03, last revised 1/25/08**

4. Revise the "Regelski Improvements Plan" on sheet 11 to reclaim the unused portion of Regelski Road cul-de-sac after extending the road.
5. Lot #31 driveway exceeds 10%. Show a profile and revise General Note 21 and the note at the Residential Driveway Detail. Call-out paving of driveway at the lot on the Cluster Subdivision Plan.
6. Perc and deeps for lots 1, 4-8, 10-16, 18, 20-29, 31-33 and 36 need to be witnessed by the Town Engineer's representative.
7. Applicant's engineer has noted that soils at proposed septic fields for Lots 1, 31 and 32 are not as mapped. The soils are mapped as "D" slopes, which are not suitable for septics. Topography, however, indicates "C" slopes, which are acceptable. Provide a note FOR THE RECORD on the plans.
8. Per revised §A168-10D, testing of the road subgrade and design of the pavement is required. Board to discuss allowing testing and design after final approval.
9. Revise the call-out at the cul-de-sac at proposed Sedge Road; should note a 70' R.O.W.
10. Show street trees on Regelski Drive and Sedge Road.

**SWPPP (Report last revised, March 2008)**

11. Revise Rip-Rap Outlet Sizing Chart. Where Min. $d_{50}$ size is 3"-6", say $d_{50}$=6". Where Min. $d_{50}$ size is 6"-12", say $d_{50}$=12".
12. Provide the declaration and the recording information on the plan for Homeowner's Association ownership and maintenance of stormwater management facilities. In the SWPPP narrative, Section VI, remove references to long-term maintenance by the Town. Indicate easements (in favor of the HOA), as required.

**BEFORE FINAL APPROVAL**

13. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Notes, Agricultural Protection Notes, Open Space Conservation, Homeowners Association, and No Further Subdivision Notes.
14. Applicant to provide signed and sealed copy of the SWPPP, and a copy of the final submitted NOI.
15. Provide easement and open space metes and bounds descriptions for review.
16. Provide irrevocable offer for road dedication for Sedge Road and Regelski Road Extension for the Town Board's approval.
17. Provide an offer of dedication for a 25 ft. wide strip along Wheeler Road.
18. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns have been set at corners of open space.
19. Pay performance bond and construction inspection fee for Town roads, stormwater management facilities and erosion control.
20. Pay a 3-year term landscape bond and inspection fee for street trees, screening plantings, and hydric plantings at stormwater management facilities.
21. Pay outstanding review fees and parkland fees.

The following comment submitted by the Conservation Board, dated 4/16/08:

Cedar Ridge - The CB is concerned about the slopes and suitability of soils for many of the lots with respect to septic systems. Perc and deeps must be witnessed by Town Engineer.

The following comment submitted by the ARB, dated 4/16/08:

Cedar Ridge – The ARB had no comments.

Comment #1: Board to discuss SEQR.

Mr. Fink: This is a Type 1 Action. The Planning Board had done a fairly lengthy SEQR review process. The Planning Board had issued a Negative Declaration prior to preliminary approval. SEQR has been complied with.

Comment #2: Applicant to discuss project.

A. Status of OCHD approval.

Kirk Rother: This application is for a proposed 36-lot cluster subdivision of approximately 137.5 acres of land. The project is located off Wheeler Road. We have several thousand feet of frontage on Wheeler Road. We are not proposing to use any of that. Wheeler Road is a scenic road as it says in the Comprehensive Plan. We received OCHD approval. The letter was faxed to me today. There have been no significant changes to the plan since preliminary approval was granted. We are hoping the Board would set this application for a final public hearing this evening.

**YIELD PLAN – dated 5/8/03, last revised 7/29/03**

Comment #3: No further comments.

**<u>CLUSTER PLAN</u> – dated 3/31/03, last revised 1/25/08**

Comment #4: Revise the "Regelski Improvements Plan" on sheet 11 to reclaim the unused portion of Regelski Road cul-de-sac after extending the road.

Kirk Rother: Ok.

Mr. Bollenbach: Kirk, are there any comments here from 5 to 21 that you would want to discuss?

Kirk Rother: No. I am ok with the rest of the comments.

Zen Wojcik: I would like to discuss comment #6 regarding the percs and deeps. Kirk and I had some discussions about this. Kirk, I looked through our records for what was done with the percs and deeps. You and I will have to sit down and figure out what is going on. What you have on the plan and what I have in my file are two different things. Let us get together to discuss this.

Kirk Rother: I could do that.

Mr. Bollenbach: Zen, also verify what the OCHD reviewed.

Zen Wojcik: That will be part of it. They did take a look at several of the lots. If they looked at it, maybe we missed that one. I don't have a difficulty with that. The point of it is that it has to be witnessed. Nevertheless, it is something we will have to talk about.

Kirk Rother: When we received our preliminary approval, we had around 8 or 9 shallow trenches, which is depth of bedrock less than 48". After our preliminary approval prior to our submittal to OCHD, we went and revisited some of those lots. We were able to move the septic slightly. We were able to get away from shallow systems. They are all conventional lots. Zen, since we spoke, I did take the original layout and superimpose the latest layout on it. There are 2 septics, lot 2 and another I can't recall right now. They have changed and weren't witnessed by either Tectonic or the OCHD. We will address those 2 lots.

Zen Wojcik: Ok.

Mr. Astorino: Ok. We will list comments 5 through 21 for the record. Do any Board members or Professionals have any comments?

Comment #5: Lot #31 driveway exceeds 10%. Show a profile and revise General Note 21 and the note at the Residential Driveway Detail. Call-out paving of driveway at the lot on the Cluster Subdivision Plan.
Comment #6: Perc and deeps for lots 1, 4-8, 10-16, 18, 20-29, 31-33 and 36 need to be witnessed by the Town Engineer's representative.
Comment #7: Applicant's engineer has noted that soils at proposed septic fields for Lots 1, 31 and 32 are not as mapped. The soils are mapped as "D" slopes, which are not suitable for septics. Topography, however, indicates "C" slopes, which are acceptable. Provide a note FOR THE RECORD on the plans.
Comment #8: Per revised §A168-10D, testing of the road subgrade and design of the pavement is required. Board to discuss allowing testing and design after final approval.

Comment #9: Revise the call-out at the cul-de-sac at proposed Sedge Road; should note a 70' R.O.W.

Comment #10: Show street trees on Regelski Drive and Sedge Road.

**SWPPP (Report last revised, March 2008)**

Comment #11: Revise Rip-Rap Outlet Sizing Chart. Where Min. $d_{50}$ size is 3"-6", say $d_{50}$=6". Where Min. $d_{50}$ size is 6"-12", say $d_{50}$=12".

Comment #12: Provide the declaration and the recording information on the plan for Homeowner's Association ownership and maintenance of stormwater management facilities. In the SWPPP narrative, Section VI, remove references to long-term maintenance by the Town. Indicate easements (in favor of the HOA), as required.

**BEFORE FINAL APPROVAL**

Comment #13: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Notes, Agricultural Protection Notes, Open Space Conservation, Homeowners Association, and No Further Subdivision Notes.

Comment #14: Applicant to provide signed and sealed copy of the SWPPP, and a copy of the final submitted NOI.

Comment #15: Provide easement and open space metes and bounds descriptions for review.

Comment #16: Provide irrevocable offer for road dedication for Sedge Road and Regelski Road Extension for the Town Board's approval.

Comment #17: Provide an offer of dedication for a 25 ft. wide strip along Wheeler Road.

Comment #18: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and stone cairns have been set at corners of open space.

Comment #19: Pay performance bond and construction inspection fee for Town roads, stormwater management facilities and erosion control.

Comment #20: Pay a 3-year term landscape bond and inspection fee for street trees, screening plantings, and hydric plantings at stormwater management facilities.

Comment #21: Pay outstanding review fees and parkland fees.

Mr. Kowal: We have a comment from the Conservation Board, dated 4/16/08.

**Mr. McConnell makes a motion to set the Cedar Ridge application for a Final Public Hearing at the next available agenda.**

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

Kirk Rother: Thank you.

**Other Considerations:**

1. **HOMARC, LLC. –** Planning Board to discuss accepting the Draft Positive Declaration. Received Letter from Lehman & Getz, dated 4/8/08 addressed to Planning Board regarding the Draft Positive Declaration.

Mr. Astorino: Ted, regarding this letter, was that on the lot coverage?

Mr. Fink: No. What they had done was clarify. We had in the original Positive Declaration that there would be construction activity on more than 80% of the site. What they clarified was that there would be mitigation plantings within the wetland buffer on the site. What I have done under Reasons Supporting This Determination # 1, was that the proposed action involves the physical alteration of approximately 80% of the site. When you look strictly at the definition under SEQR of physical alteration, it does include removal of vegetation, planting of vegetation, application of pesticides, herbicides, and those sorts of things. They are still right at that 80% but it doesn't actually mean that they will be doing construction activities on 80% of the site. That has been corrected to reflect that. Also, many of the sites within this area of the Town, we will get a letter from the US Fish & Wildlife Service's regarding Indiana Bats. I have added that under the Reasons Supporting This Determination under #2. Under Reasons #5, I have a reference regarding traffic. Previously I had it referenced to the Comprehensive Plan recommending the use of secondary access roads. It was on the golf course also. It does that to with the marginal access road requirements. I added the Town's Zoning Law reference about limiting the location and number of access points on Route 94. I have added that to Reason #5.

Mr. Astorino: Does someone care to make a motion on the Positive Declaration?

Mr. McConnell makes a motion for the Positive Declaration.

Seconded by Mr. Kowal. The following Resolution was carried 4-Ayes and 1-Nay (Mr. Singer).

**617.7 and 617.12**

**State Environmental Quality Review (SEQR)**

# Positive Declaration

Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS)
Determination of Significance

**Date:** April 16, 2008

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Warwick Planning Board, as Lead Agency, has determined that the proposed action described below may have a significant effect on the environment and that a Draft Environmental Impact Statement will be prepared.

**Name of Action:** Homarc Development

**SEQR Status:** Type I ☐
Unlisted ☑

**Description of Action:** The proposed action consists of a proposed ± 20,000 square foot office and retail building on a 5.1 acre site in the Town's Design Shopping (DS) Zoning District. The applicant has proposed that the building be served by wells and a septic disposal system. The site consists predominantly of meadow or brushland, a forested area, and protected freshwater wetlands.

**Location:** Route 94, Town of Warwick, Orange County New York
Design Shopping (DS) Zoning District
Section 51, Block 1, Lot 5.231

**Reasons Supporting This Determination:**

1. The proposed action involves the physical alteration of approximately 80 percent of the site. This has the potential to cause soil erosion and subsequent sedimentation of protected surface waters.
2. The proposed action includes construction activities adjacent to protected wetlands and streams. The discharge of stormwater runoff from developed areas on the site would be directed to such wetlands and stream. The wetlands in this area are known to harbor an endangered species, the Bog Turtle and in such cases, consistency with the US Fish and Wildlife Service's Bog Turtle Recovery Plan is necessary. The site may also provide habitat suitable for the endangered Indiana Bat.
3. The proposed action would require the use of groundwater wells to supply the potable water needs of the development. Sanitary sewage from a commercial use would be discharged into an individual septic disposal system within the Town's Aquifer Protection Overlay District.
4. The proposed action will irreversibly convert Prime Farmland Soils within a New York State Agricultural District and a Town of Warwick Agricultural Protection Overlay District. The site is also in an area where the Town of Warwick has made significant expenditures of public funds for the purchase of development rights on nearby farms.
5. The proposed action has the potential to impact traffic on local, State and county roads as well as pedestrian movements in the area. A preliminary Traffic Study completed for the proposed development indicates that a separate turn lane would be required for the proposed development on Route 94, thereby potentially altering the rural character of the highway. The Town of Warwick Comprehensive Plan recommends the use of secondary access (marginal access) roads to limit the number of curb cuts and the Town Zoning Law requires limits on the location and number of access points on Route 94.
6. The proposed project may not be consistent with the Town of Warwick Comprehensive Plan's recommendation to use significant natural buffering between proposed developments in the DS Zone and the highway due to the proposed location of a septic disposal system between Route 94 and the proposed parking lot. The Town of Warwick Design Guidelines

recommends that all parking be provided at the side and rear of proposed non-residential developments, which the proposed project is also not consistent with.

**Public Scoping of the Draft EIS will occur as follows:**

Scoping of the Draft EIS will be conducted. The applicant will first submit a Draft Scoping Document. Such Document will then be forwarded to all Involved and Interested agencies, through publication of a "Notice of Project Scoping" in the official Town newspaper, and through availability of the Draft Scoping Document on the Internet for viewing or downloading at http://www.townofwarwick.org. The Draft Scoping Document, once submitted, will also be available for public review at the Town of Warwick Planning Board offices. A Public Scoping Session will be scheduled to discuss the Scoping Document and additional written comments will be accepted afterwards. Following the public Scoping Session, the Planning Board will prepare and distribute a Final Scoping Document.

**For Further Information:**

Contact Person: Connie Sardo, Planning Board Secretary
Address: Town of Warwick Planning Board
132 Kings Highway
Warwick, NY 10990
Telephone: 845-986-1120

**A Copy of this Positive Declaration Filed With:**

Supervisor Michael Sweeton

Town Board of the Town of Warwick

Town of Warwick Planning Board

Town of Warwick Conservation Board

Orange County Department of Health

Orange County Department of Planning

New York State Department of Environmental Conservation

United States Fish & Wildlife Service

United States Army Corps of Engineers

Environmental Notice Bulletin
enb@gw.dec.state.ny.us

Homarc Land LLC.

Mr. Singer: I am a little uncomfortable with this Positive Declaration. We know what is there from the abutting property which was handled by the same engineer. I think that our concerns could be addressed just as well in a Part 3 EIS rather than doing a Positive Declaration.

Mr. Astorino: That is your opinion. You are right. It is the same concerns as the other site.

Mr. Singer: We know what is there.

Mr. Astorino: But, the other side was issued a Positive Declaration also for the same reasons that we are issuing a Positive Declaration for this one.

Mr. McConnell: Just looking at it, it looks like there are some differences between the parcel that Carl is referring to and this parcel. Some of it is the same. The concerns are the same. I think a Positive Declaration is appropriate in this situation.

Mr. Astorino: Do any other Board members have anything to say?

**2. <u>Planning Board Minutes of 3/19/08</u> –** Planning Board Minutes of 3/19/08 for Planning Board Approval. (On 4/14/08 @ 11:30 a.m. I emailed the minutes to PB).

Mr. McConnell makes a motion to Approve the March 19, 2008 Planning Board minutes.

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

**<u>Correspondences:</u>**

**1. <u>Lands of Sandra S. Ansley (SBL # 63-1-16</u> –** Memo from Supervisor Sweeton, dated 4/14/08 addressed to Planning Board.

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

**<u>Privilege Of The Floor For Agenda Items!!</u>**

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.

Nancy Owen: Could you summarize what that memo was under correspondences?

Mr. Bollenbach: It is regarding the Ansley project. They were requesting a postponement for the timing on the posting of the bonds and the inspection fees.

Nancy Owen: Thank you.

Mr. Astorino: The Supervisor wrote the memo.

Mr. Bollenbach: There is supposed to be no site disturbance and the bonds would be posted prior to the issuance of a building permit. Mrs. Ansley is elderly. She has no plans to developing this project herself. It will be up to the subsequent purchaser.

Nancy Owen: I have another question. Everyone up here seemed very unhappy with what was going on with the Gangemi project. I have asked at meetings ago that once you get final approval on a project and you have outstanding items, how do you make sure that things are taken care of? That is when business really begins. Does the Town Engineer go and visit the property to see that these things that are required are taken care of?

Mr. Astorino: On occasion, he does.

Nancy Owen: If all of these things are being followed up, then Gangemi should have not become this.

Mr. Bollenbach: That was why he was stopped during construction.

Mr. Astorino: The way the process works, you don't have an Inspector out there 24/7. All of these applications that we had here before us and we gave approvals to tonight, they have required almost every restrictions. There are notes placed on the plans. Everything has to be followed a certain way. If they don't follow it, they will get caught. I don't think you could ever say that anything is 100% full proof. I think that it is frustrated for the Board especially on the Gangemi application.

Nancy Owen: If you don't have any enforcement power, then what do we need you for?

Mr. Bollenbach: You misunderstood. It is the Building Department's Building Inspector's responsibility for enforcement.

Mr. Astorino: The Planning Board does not do enforcement. We follow the code. We dish it out. What our job is here to do is to follow the Town of Warwick Code. That is what we do. Once we give final approval to a project, before I sign off on a map, the engineers review it. The declarations are then put into place. Mr. Bollenbach reviews the declarations. Everything is reviewed on what we possibly could do. Construction doesn't mean that it is going to be started right then. When construction gets started, it goes to the Building Department. That is how people get caught. The Building Department of the Town of Warwick does enforcement.

Nancy Owen: So, someone has to catch them.

Mr. Astorino: The Building Department has to do their job.

Mr. Singer: I think if a newspaper reporter stopped down there and look over it, I think they should report on what is happening.

Nancy Owen: I don't know what I am looking at.

Mr. Showalter: Nancy, they did stop them. They were issued a Stop Work Order.

Mr. Astorino: That was why they came back before the Board. Nancy, do you have anything further?

Nancy Owen: No.

Mr. Astorino: Is there anyone else wishing to address any of the agenda items? Let the record show no further public comment.

**Mr. McConnell makes a motion to adjourn the April 16, 2008 Planning Board meeting.**

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