

TOWN OF WARWICK PLANNING BOARD

July 15, 2009

Members present: Chairman, Benjamin Astorino  
Russell Kowal, Dennis McConnell  
Roger Showalter, Carl Singer  
Zen Wojcik, Tectonic Engineering  
John Bollenbach, Planning Board Attorney  
Connie Sardo, Planning Board Secretary

The regular meeting of the Town of Warwick Planning Board was held Wednesday, July 15, 2009 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 Normajeon Fusco**

Application for Preliminary Approval of a proposed 12-Lot + 1-Affordable Home cluster subdivision and Special Use Permit for the Affordable Home, entitled, *Fusco Subdivision*, situated on tax parcel S 18 B 1 L 31.2; parcel located on the southern side of Taylor Road with Jessup Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the May 6, 2009 Planning Board meeting.

Representing the applicant: Dave Higgins from Lanc & Tully Engineering. Tom Cusack, from Leggette, Brashears & Graham, Inc. Normajeon Fusco, Applicant. Ira Emmanuel, Attorney.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
  - A. Driveway in Lot 2 and shared driveway for Lots 12 & 13 show significant trees that are in conflict with proposed driveways and not labeled TBR.
  - B. Much of the proposed developed area is within the Wheeler/Stony Creek Biodiversity Area, identified by the Metropolitan Conservation Alliance "Southern Wallkill Biodiversity Plan". Applicant to analyze how the proposed development is consistent with the Plan's recommendation to minimize impacts on wetland and streamside habitats in this parcel, to the Town Planner's specifications.
  - C. Applicant and T/Planner to discuss 2 lots separated from cluster, common driveway across steep slope.
  - D. Project is within the Ridgeline Overlay District. Provide a viewshed analysis – Visual EAF Addendum and line-of-sight profiles – to the Town Planner's specifications.
2. Applicant to discuss project.  
**YIELD PLAN (DATED 8/26/05), LAST REVISED: 10/11/05**
3. No further comments. Board accepted Yield Plan by consensus, November 16, 2005.  
**CLUSTER PLAN (DATED 9/30/05, LAST REVISED 6/16/09)**
4. Clarify response to question 3 of the "11 questions" – are soils in the proposed open space suitable for Ag use?
5. Applicant proposes a Town Road. Board to discuss referral to Town Board.

6. Per §A168-10D, testing of the road subgrade and design of the pavement is required. Provide test results and pavement design calculations for Town Engineer's review and approval before final approval.
7. Board and applicant to discuss Notes 10 and 11 regarding drainage easements and responsibility for maintenance of Stormwater Management facilities.
8. Provide a map note for preservation of existing drainage channels through subdivided lots.

**SWPPP COMMENTS (SWPPP REPORT 10/14/08, REV. 4/09)**

9. No Further Comments.

**WELL TESTING & MONITORING**

10. Refer to the attached Tectonic memo, dated July 8, 2009.

**BEFORE FINAL APPROVAL:**

11. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Open Space Conservation Notes, Stormwater Management Facility Ownership and Maintenance Notes and Common Driveway Use and Maintenance Notes.
12. Provide the recording information on the plan for the irrevocable offer of dedication of the proposed Town Road and dedication of portions of Taylor and Jessup Roads.
13. 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.
14. Propose a road name for the town road. Applicant to provide 9-1-1 addressing.
15. Pay parkland fees.
16. Pay Landscape Maintenance Bond (street trees, SWPPP landscaping) for period of 3 years.
17. Pay Performance Bond and construction inspection fee for public improvements (road, stormwater management facilities, and erosion control measures).
18. Pay outstanding review fees.

The following comment submitted by the Conservation Board:

Normajeau Fusco – None submitted.

The following comment submitted by the ARB:

Normajeau Fusco None submitted.

Comment #1: Board to discuss SEQR.

- A. Driveway in Lot 2 and shared driveway for Lots 12 & 13 show significant trees that are in conflict with proposed driveways and not labeled TBR.
- B. Much of the proposed developed area is within the Wheeler/Stony Creek Biodiversity Area, identified by the Metropolitan Conservation Alliance "Southern Wallkill Biodiversity Plan". Applicant to analyze how the proposed development is consistent with the Plan's recommendation to minimize impacts on wetland and streamside habitats in this parcel, to the Town Planner's specifications.
- C. Applicant and T/Planner to discuss 2 lots separated from cluster, common driveway across steep slope.
- D. Project is within the Ridgeline Overlay District. Provide a viewshed analysis – Visual EAF Addendum and line-of-sight profiles – to the Town Planner's specifications.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: "The Planning Board declared itself Lead Agency and we have been using the Long Environmental Assessment Form to review the project. At this point, we are still awaiting information from the applicant to enable the Planning Board to make a determination of significance or non-significance. The Board may recall that the applicant asked for the scheduling of a public hearing so that any potential water supply issues could be addressed as soon as possible. SEQR issues raised to date and which have not as yet been fully discussed include:"

- a. On-site biodiversity areas have been identified in the Southern Wallkill Biodiversity Plan. The applicant's analysis has not addressed the specific recommendations of the Plan, which include use of best management practices for wetland protection and a wildlife survey to assess wildlife resources in the areas of development on the site (see pages 26 and 27 of the Plan).
- b. Viewshed/Ridgeline visibility needs to be addressed since a viewshed analysis (i.e. line-of-sight profiles and a Visual EAF Addendum) has not as yet been prepared.
- c. A Water Supply Report has been prepared and revisions or a response to comments have been requested by the Town Engineers.
- d. The cluster subdivision criteria analysis has been submitted. However, I believe there may be outstanding comments on this from Planning Board members that includes the length of the shared driveway for proposed lots 12 and 13.
- e. The future agricultural use of the remaining lands in the protected open space. I believe that we are waiting for an analysis of the suitability of the soils in the proposed open space areas to determine whether they are suitable for continued farming as proposed by the applicant.

Comment #2: Applicant to discuss project.

Dave Higgins: This application has been before the Planning Board since the year 2004. We have gone through an evolution of the plan; it is a cluster subdivision plan. We had a public hearing 2 months ago. At that public hearing, as indicated by Mr. Fink, the Planning Board had requested that we conduct a hydro-geologic analysis of the proposed wells and the potential impacts on the surrounding wells on neighboring properties. Tonight, I have with me Tom Cusack from Leggette Brashears & Graham, Inc., who oversaw the testing of the wells. He prepared a report. He submitted the report to the Town. Also, here tonight is Normajean Fusco the applicant and Ira Emmanuel the applicant's Attorney. The comments that relate to the Bio-Diversity Plan, we had addressed those comments in previous submissions to the Planning Board. It was our understanding that the Southern Wallkill Bio-Diversity Plan is a recommendation which was prepared by a non-profit organization. Essentially the goal of that report was geared towards the municipalities of the Towns of Goshen, Chester, and Warwick. It essentially suggested that those municipalities take a community wide approach; by community, I don't mean municipalities but rather the environmental communities associated with the Southern Wallkill Watershed Area. Essentially, it recommended that those municipalities undertake studies that were not project specific and that they develop regulations as part of their Town regulations that would incorporate the protection of the wildlife. As much as the Town of Warwick has developed clustering provisions and low impact development practices, we have implemented those into the plan. We believe that we have met the ultimate goals of the Southern Wallkill Bio-Diversity Plan, which was required by the Town of Warwick in their Zoning Code.

Mr. Astorino: Let us go through the rest of the comments. We will get to the Tectonic Memo, dated 7/8/09 as we go through this.

Mr. McConnell: Mr. Higgins, do you mean to suggest that we are not within our authority to ask you to include what Ted has written in his memo in regards to use of best management practices for wetland protection and wildlife survey to assess wildlife resources? Are you saying that we don't have the authority to ask you to do a wildlife survey to let us know what the wildlife resources in your area of development are?

Dave Higgins: No. I don't think I am saying that. What I am saying is that I think the protection of the wildlife is inherent in the concept of clustering.

Mr. McConnell: Without a survey, how would we know what wildlife is there? I am a little bit concerned that you seem to suggest that you have satisfied everything and we cannot ask you for anything more. I don't think that is what you are trying to say. Dave, is that correct?

Dave Higgins: No. What I think I am trying to say is that the Planning Board has gone through a lengthy and thorough review. I feel the Planning Board has given this a very thorough review. We have made modifications to the Plans over the course of the last 5 years to minimize impacts. There was a yield plan that we developed. The yield plan demonstrated the allowable number of units. Essentially that yield plan occupied the vast majority of the site. Based upon that, I believe it was a joint determination that the cluster plan was the way to go. We came up with this plan to fit those lots on the site and minimize impacts to wetlands. We made crossings as few and narrow as possible. We have made the lots as small as possible. In my submission letter, we compared the acreage of the impervious area that was associated with the yield plan versus with what we have here on the table today. We had a stormwater management plan that had a larger permanent stormwater management facility. Your Town Engineer suggested that we look to modify that. We had done that. They asked us to add rain gardens. We have done that. The Board had asked us to locate trees that were in the areas of disturbance and that were over 8" in diameter. We have done that. Based on those locations where possible and practical, we have avoided those trees.

Mr. McConnell: That is all duly noted with appreciation.

Mr. Astorino: We know what we have been through with this project. We have been through many modifications. I wasn't at the work session. I don't know if Ted had brought up any clarifications on the wildlife study. Let us go through the rest of the comments. I am sure there will be some issues with the Memo from Tectonic, dated 7/8/09.

#### **YIELD PLAN (DATED 8/26/05), LAST REVISED: 10/11/05**

Comment #3: No further comments. Board accepted Yield Plan by consensus, November 16, 2005.

#### **CLUSTER PLAN (DATED 9/30/05, LAST REVISED 6/16/09)**

Comment #4: Clarify response to question 3 of the "11 questions" – are soils in the proposed open space suitable for Ag use?

Mr. Astorino: Zen, were you looking for something specific on that?

Zen Wojcik: It was part of the 11 questions. You will be using open space for Agricultural uses, it would have to be usable for Agricultural use. In the response we received from the applicant, the applicant previously did not specifically respond to that. We are asking for some clarification.

Dave Higgins: The soils that are out there are Class 4 soils, MdB soils and MdC soils. There are some other Erie soils that are there that correspond with the wetland. Those are what the State would call soils of statewide significance. In checking with that, we looked at those soils that are included within that statewide significance. They represent 46% of Orange County. I will tell you that those soils are considered marginal. They are not prime agricultural soils. Normajean who has owned the land for many years has indicated that it is of limited use. You could basically grow hay on it. That is about the extent of what could be grown on that property.

Zen Wojcik: Right now, there are horses on the property. When we were there a couple years ago, there were a few horses running around. A similar kind of agricultural operation could continue on the open space?

Dave Higgins: That is the purpose.

Mr. Astorino: The bottom line is that if it could grow hay, it could handle horses.

Dave Higgins: Right.

Mr. Astorino: You have answered the question.

Comment #5: Applicant proposes a Town Road. Board to discuss referral to Town Board.

Mr. Astorino: You will need to make an application to the Town Board. If they decide that they want to allow a Town Road on this and the Planning Board has any opinion one way or another on this matter, we could get a memo out to the Town Board from us.

Mr. Bollenbach: I think it has already been discussed. I thought that they were not in favor of it. If Mr. Higgins and the applicant would like to contact the Town Board directly, they could do that.

Dave Higgins: I didn't know that it had been formally reviewed by the Town Board.

Mr. Bollenbach: No. You would get an informal recommendation that a Town Road would not be preferred.

Dave Higgins: Ok. At the last meeting in May, we talked about a possible HOA if the Town did not want to accept the road.

Mr. Astorino: That would be your call. You and the applicant could make an application to the Town Board and run it by them. That would be their deal.

Dave Higgins: Yes. Ok.

Comment #6: Per §A168-10D, testing of the road subgrade and design of the pavement is required. Provide test results and pavement design calculations for Town Engineer's review and approval before final approval.

Mr. Astorino: Zen, does that also go for a Private Road?

Zen Wojcik: Yes.

Comment #7: Board and applicant to discuss Notes 10 and 11 regarding drainage easements and responsibility for maintenance of Stormwater Management facilities.

Dave Higgins: We have notes on the plans that talk about the maintenance of the drainage facilities. They also depend on the ultimate determination of the Town Board. If the Town is not interested in the road they would most likely not be interested in the drainage facility either. If there is a HOA, then it would be likely those maintenance responsibilities would be incorporated into that.

Comment #8: Provide a map note for preservation of existing drainage channels through subdivided lots.

Dave Higgins: We added note 13 on sheet 1 of the plan. Note #13 states as follows: *"Existing and proposed drainage culverts, ditches, and waterways shall be kept free and clear of debris. It is the responsibility of the individual property owners on whose property such facilities exist to maintain these facilities to ensure proper drainage so that no adverse impacts on upstream or downstream properties are created."*

Mr. Astorino: John, would that be in their deeds?

Mr. Bollenbach: We could have that in the declarations.

Mr. Astorino: I would do that.

Mr. Bollenbach: Yes.

#### **SWPPP COMMENTS (SWPPP REPORT 10/14/08, REV. 4/09)**

Comment #9: No Further Comments.

#### **WELL TESTING & MONITORING**

Comment #10: Refer to the attached Tectonic memo, dated July 8, 2009.

Mr. Astorino: Zen, do you want to run through that memo, dated July 8, 2009?

Zen Wojcik: Yes. We have a memo from Tectonic, dated 7/8/09. The memo is stated as follows:

### MEMORANDUM

**TO:** Edward S. Butler, P.E., M.ASCE –  
Warwick Town Engineer  
Zen Wojcik – Warwick Planning Board  
Engineer

**FROM:** James Upright, P.E.

**SUBJECT:** W.O. 532.0305FUS Review of the  
Proposed Fusco Subdivision Well  
Testing Report

**DATE:** July 8, 2009

---

As requested, we have reviewed the pump test report and data (the “report”) for the Proposed Fusco Subdivision prepared by Leggette, Brashears & Graham, Inc. (LBG) for the Town of Warwick Planning Board. This report documents their pump testing and pump test results for one well located in the proposed subdivision as well as presenting the analytical test results for the water sample collected from the test well. The well was located on Lot #3 as suggested in Tectonic’s letter to Lanc & Tully dated March 2, 2009. The well was estimated by the driller to be capable of producing approximately 30 gallons per minute (gpm). The 24 hour pump test was performed on May 19 and 20, 2009 at a rate of 8 gpm. A water sample was collected from the well prior to the end of the pump test.

Our review indicates that based on the data presented in the report, the well on Lot #3 is capable of a yield of 8 gpm and the analytical results of the water sample from the well on Lot#3 meet NYSDOH drinking water standards. Based on the data presented in the report, the well on Lot# 3 does not appear to cause any measureable impacts to any of the monitored on-site or neighboring off-site wells. The report also includes a water balance calculation that shows that the recharge to the entire property will be less than the estimated withdrawals.

Further review of the data presented in the report shows a large drawdown event on the hydrograph for the Fusco Residence Well 1 on the second day of the pump test. This event was not discussed in the report even though it was of similar magnitude as the pump test and occurred at the end of the pump test period. We have the following comments on the drawdown event at Fusco Well #1:

1. The applicant should explain the cause of this drawdown, and any other specific information that is known about the drawdown event (for example constant rate, duration, purpose, etc.).
2. Tectonic reviewed the hydrograph for the Fusco Residence Well 1 and the hydrographs for the two wells at 23 Taylor Road and find they appear to be:

- a) Directly influenced by the pumping at the Fusco Residence Well 1 during the entire monitoring period
- b) And each well is impacted by the large unexplained drawdown event. The magnitude of the impact is not measureable due to the apparent “clipping” of the data in the Taylor wells.

The Taylor wells are shown as being 800 feet from the Fusco Residence Well 1 and the corresponding drawdowns in the Taylor wells is approximately one-half of the amount of drawdown in the on-site Fusco well #1. The applicant should provide additional details on these three wells including depth and type of construction as well as indicate why the drawdown in the 23 Taylor Road wells appears to be vertically (depth) “clipped.”

3. As discussed above, the drawdown data shows that a well on the Property (Fusco Residence well 1) created measureable impacts in wells 800 feet away. The applicant should address the question raised in our letter to Lanc & Tully dated March 2, 2009 how wells on Lots 5 through Lot 11 will be impacted by the close spacing of these lots, as these proposed wells range from only 60 to 170 feet apart.

Zen Wojcik: In essence, the Board had asked that a well be drilled on proposed Lot #3. That well was to be tested in accordance with the County’s standards and the State standards. Any adjacent property owners within 1,000 feet would be given the option to allow their wells to be monitored. There were a number of wells monitored. I believe it was 13 wells monitored. The first part of Tectonic’s memo states that yes, we recognize that it was done in the proper manner. There was a work plan that was presented to Tectonic. We had reviewed it. We gave some comments back to Leggette, Brashears & Graham, Inc. (LBG). They followed along with that plan. The result of the pump testing was that they had it at a rate of 8 gpm. There was no interconnectivity between the monitored wells and pumping at well Lot #3. That we understood. There were also tests done of the well water and it has met all of the NYSDOH drinking water standards. There was some other data that was included in the report that we were concerned with. There was a drawdown shown on the Fusco’s residence Well #1. There was a pump test with no explanation given. We were confused about that. We noted that along with that event there was a mirroring of it on wells located on 23 Taylor Road. That led to us to go back to a question that we had asked. We asked LBG take a look at several of the lots that are proposed for this development which are rather small. Their wells are close together. They are closer to Well #1. We were wondering if there would be any interconnectivity between those as well. That was one of the statements in this memo, which was to provide additional data. I understand that Mr. Cusack had a conversation today.

Tom Cusack: I am from Leggette, Brashears, & Graham, Inc. (LBG). I am a Hydrologist. I had an important conversation with Tectonic’s Engineer James Upright regarding the drawdown in what we call Fusco Well #1 which is the existing well on the property that supplies the home, barn, horse farm facilities, plus the associated apartment in the barn. The well supplies two residences plus the horses and the irrigation for the horses. This subdivision in order to meet Orange County’s approval was required to provide information on 2 onsite wells. The County authorized the tested information to be provided on Well #3/Lot #3, which was provided to the Town. In addition, they requested some yield test and water quality information on Fusco Well #1. The drawdown that was so noted 24 hours into the test was the test being conducted on Well #1. We will provide that information that was provided to the County to the Town Engineer.

Mr. Astorino: We haven't seen that information yet.

Tom Cusack: Right.

Zen Wojcik: The report that was submitted to the Town, we consider it incomplete.

Mr. Astorino: It is incomplete.

Tom Cusack: Yes. The drawdown was a result of a test conditioned by the OCHD. The probes picked it up. They provided the information.

Mr. Astorino: Were there any other wells monitored? Do we have the results on them as far as the neighboring wells? Do we have the information for all of them?

Zen Wojcik: We have all of the information. That was what brought this question up. We had seen that something happened over at Fusco Well #1. We also noted that there was a similar event that was reflected on the ones on the Taylor Road property.

Mr. Astorino: There was some interconnectivity.

Tom Cusack: There was interconnectivity to one well, which was the 23 Taylor Road well. The other 12 wells indicated no interconnectivity at all. It was discussed with James Upright, which he somewhat agreed in the aspect of under normal use of having several days of hydrographic information from the offsite wells which had pretested and post-tested information. Under normal operation of Fusco Well #1 for the 2 homes and the barn, it showed no impact. It was just during the 24-hour event when the well was running. There was no interconnection. We will supply the Board with more information on that.

Mr. Astorino: Ok. Does the Board have any other questions?

Mr. Bollenbach: Zen, you mentioned in Tectonic's memo a clipping of the data. What does that refer to?

Zen Wojcik: The data that was presented for Well #1, it had a line drawn on the bottom. It was incomplete data.

Tom Cusack: It was for the Taylor Road wells. There are 2 wells on the property. We sent a mini-probe down the well. It hit an obstruction. Due to the obstruction, the equipment wasn't allowed to go any deeper.

Mr. Astorino: Ok. Comments 11 through 18 are the same comments from the last meeting. We will list Comments 11 through 18 for the record. Do any Board members or Professionals have any comments? This is a public hearing. If there is anyone in the audience wishing to address the Normajean Fusco application, please rise and state your name for the record.

**BEFORE FINAL APPROVAL:**

Comment #11: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Open Space Conservation Notes, Stormwater Management Facility Ownership and Maintenance Notes and Common Driveway Use and Maintenance Notes.

Comment #12: Provide the recording information on the plan for the irrevocable offer of dedication of the proposed Town Road and dedication of portions of Taylor and Jessup Roads.

Comment #13: 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 #14: Propose a road name for the town road. Applicant to provide 9-1-1 addressing.

Comment #15: Pay parkland fees.

Comment #16: Pay Landscape Maintenance Bond (street trees, SWPPP landscaping) for period of 3 years.

Comment #17: Pay Performance Bond and construction inspection fee for public improvements (road, stormwater management facilities, and erosion control measures).

Comment #18: Pay outstanding review fees.

Mr. Bollenbach: I just want to let the public know that the public hearing will be continued or adjourned to a certain date or adjourned without date. We are just looking for any additional information or additional questions that you might have.

Mr. Astorino: Right. The reason for that would be we haven't received all of the information yet.

John Galiski: I live on Jessup Road. My well was tested. Is the 24 hours a standard that the County requires for testing the well?

Zen Wojcik: Yes.

John Galiski: That seems like a short time.

Zen Wojcik: The well has to be stabilized. What that means, the water level drops then it stays at a particular level. That has to be stabilized for 24 hours. That was what they achieved. They ran it for 24 hours. Then, it bounced back up.

John Galiski: I know during that testing period, we experienced something almost close to 100-year record rainfall. I am looking at the report. The well driller stated that there was 30 gpm.

Mr. Astorino: Was that from your well?

John Galiski: No. This was from the test well. But, as a result of their testing they only determined that there was 8 gpm.

Zen Wojcik: They pumped at 8 gpm.

John Galiski: Ok. That was what they pumped at. That explains that. The question I have is in regards to the designation of the wetlands. Are these hatch lines wetlands?

Dave Higgins: Yes.

John Galiski: Is this dark color on the map wetlands?

Dave Higgins: Yes. On the map, one line type is the steep slope areas and the other line type is the wetland.

John Galiski: What does the stripe area mean on the map?

Dave Higgins: That is the proposed open space areas.

John Galiski: Looking at the map, my property is located here. This wetland goes right up to the back of my property.

Mr. Astorino: Yes.

John Galiski: That is where that ditch is. I talked about that at the last meeting.

Mr. Astorino: We discussed about keeping them open and putting it into the homeowner's deeds.

John Galiski: Ok. Thank you.

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

Norman Glowaczewski: I live on Taylor Road. If this project ever goes through and I run out of water next year, what will be done about it? You will give me an answer. Is that right?

Mr. Astorino: We don't guarantee the same as you didn't guarantee when your house was built or when your neighbor came in and dug a well. That is why we are going through this process.

Norman Glowaczewski: This is right behind me.

Mr. Astorino: I understand that. That is why we are going through the process of what we are going through right now.

Norman Glowaczewski: I hope you do it right.

Mr. Astorino: We will.

Norman Glowaczewski: Ok. Thank you.

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

Zen Wojcik: Mr. Chairman, the Town had received the Orange County Department of Planning's comments for their §239-l.m&n report, dated 5/20/09. A few of the comments are binding. I don't know if you want to include these comments.

Mr. Astorino: We will put those Orange County Department of Planning comments, dated 5/20/09 in for the record.

**County Reply -Mandatory Review of Local Planning Action as  
per NYS General Municipal Law §239-1, m, & n**

**Local Referring Board:** Town of Warwick Planning Board                      **Referral ID #:** WRT 14-09N  
**Applicant:** Norma Jean Fusco    **Tax Map #:** 18-1-31.2  
**Project Name:** Norma Jean Fusco    **Local File #:** none provided  
**Proposed Action:** Major Subdivision creating 13 lots in a cluster arrangement  
**Reason for County Review:** Within 500 feet of an active agricultural operation located within Orange County Agricultural District No. 2  
**Date of Full Statement:** May 20, 2009

**Comments:**

The Department has received the above referenced major subdivision and has determined that the proposed action has the potential to cause intermunicipal or countywide impacts. We therefore recommend that the local referring board address the **binding comments** outlined below. The local referring board may not act contrary to such recommendations except by a vote of a majority plus one of all the members thereof or by disapproving the action.

1.        **Wetland Protection:** The 74.6-acre project site contains approximately 30 acres of wetlands that the applicant has shown to be under the jurisdiction of the Army Corps of Engineers. The shared driveway for proposed Lots 12 crosses a portion of the wetland in one location.
  - A.        We recommend that proposed Lots 12 and 13 should be eliminated, and the land should be incorporated into the common open space area. Alternatively, we recommend modification of the proposed subdivision plan such that the proposed driveway for lots 12 and 13 be designed and built in a manner that allows water to flow freely beneath it at that point where it intersects the wetland. The flow of water through the wetlands after construction should resemble preconstruction conditions as closely as possible so that the distribution of wet and dry land is relatively unchanged.
  
2.        **Wetland Delineation:** Wetlands are natural features defined by soils, vegetation and hydrology, and their boundaries are typically represented by gently curving lines, although in instances of human alteration, natural disturbance or abrupt geological changes, wetland boundaries may be angular. The boundary of the onsite wetland area is depicted in straight lines and sharp angles, particularly in the common open space area, and we recommend therefore that the Planning Board require the applicant to provide either a copy of a wetlands survey conducted onsite by a licensed professional or another justification of the angular wetland configuration as shown.
  
- 3,        **Clustering:** In our view, the layout of the proposed 13 lots is a misrepresentation of clustering. The primary objective of clustering according to state enabling legislation is to "... enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open space." While the plan as proposed avoids some of the steep slopes, wetlands and other environmentally constrained land, these lands would likely remain unutilized under conventional development anyway. This cluster subdivision does show the open

space being contained in one large tract, but it is unclear how the common open space is owned and managed. While the clustering layout may be assumed to have shorter roads and reduced lot coverage than would be found in a conventional subdivision plan, the roads as shown in the clustering plan, including the long common driveway for proposed lots 12 and 13, add up to more than a half mile of pavement, not including the area of the lots that will be covered by impervious surfaces (driveways and building footprints).

A. We recommend that the applicant reduce the number of proposed lots for this project, specifically eliminating lots 12 and 13.

B. We recommend that the applicant should contact the Town of Warwick Conservation Board, the Warwick Conservancy, Inc., or the Orange County Land Trust as soon as possible, so that those organizations may offer their advice on designing the project to meet conservation objectives as well as the needs of the applicant.

4. **Minimizing Front Yard Setback:** The proposed development locations shown on Lots 2, 3, and 4 include driveways in excess of 300 feet, and the shared driveway for Lots 12 and 13 is longer than 1400 feet. Keeping the homes closer to the road typically means a lower degree of land disturbance, smaller areas of impervious surfaces with correspondingly smaller amounts of wastewater runoff, minimized clearing of vegetation, and larger back yards, which tend to be used more often than front yards for recreation and leisure). In situations such as this where the developable area of the site is limited by the presence of wetlands and steep slopes, keeping the homes closer to the road limits the percentage of land that is covered by the proposed development, and the more compact development is frequently a more cost-effective option for the developer while preserving the maximum possible amount of open space to the benefit of the town. Additionally, as the project site is located in the Ridgeline Overlay District, the visual impacts of the proposed development can be minimized by keeping the proposed residences on the lower part of the site.

A. We recommend that the Town to consider requiring that homes on proposed lots 2, 3, and 4 be located as close to the onsite road as is practical, in order to minimize impacts to the project site and its vicinity.

B. We further recommend that Lots 12 and 13 should be eliminated. Alternatively, we recommend that the applicant should find an alternate route to provide access to Lots 12 and 13.

Additionally, this Department offers the following **advisory comments** for your consideration.

**Open Space Connection:** We recognize and appreciate that the applicant has shown a connection between the open space area of this subdivision and the open space of the Hampton Hills Subdivision, adjacent to the project site on the west. We advise the Town, the applicant, and the owner or manager of the Hampton Hills open space area to work together to create connections between the two open space areas in such a way that the onsite wetlands and areas of steep slopes are undisturbed.

**Better Site Design:** Increasing the amount of impervious surface in a watershed can result in increased stormwater runoff, flooding and streambed erosion, and surface and groundwater pollution. Impervious surfaces can also change the hydrology and ecology of a watershed by decreasing groundwater recharge and increasing water temperature of receiving streams. In order to mitigate these impacts, the Town could require better site design techniques, which decrease stormwater runoff through micro-scale, bioretention facilities such as rain gardens, open drainage swales, curbless parking areas, permeable pavement, and dry wells. These techniques allow stormwater to infiltrate into the ground close to where it falls, rather than channeling it through pipes and culverts to conventional facilities such as detention ponds and manmade wetlands. Using design techniques that store, infiltrate, evaporate, and detain stormwater runoff in a

model of the site's predevelopment hydrology reduces the environmental impacts of development by reducing stormwater runoff and soil erosion while enhancing groundwater recharge and minimizing impacts to natural aquatic habitats.

Shared Driveway: The applicant has proposed a shared driveway to serve Lots 12 and 13. In the event that Lots 12 and 13 are not removed from the proposal as recommended by the County, we recommend that a shared driveway agreement should be put in place for those two lots. Our office will be happy to forward a sample Shared Driveway Agreement to the Town upon request.

**County Recommendation: Approval subject to modification as per Comments # 1A, 2, 3A, 3B, 4A and 4B.**

**Date:** May 26, 2009

**Prepared by:** Megan Tennemlann, Planner

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. A referring body acting contrary to such a recommendation of modification or disapproval (with a supermajority vote) must set forth the reasons for the contrary action in such report. For such filing, please use the final action report form attached to this review or available on-line at [www.orangecountygov.com/planning](http://www.orangecountygov.com/planning).

Mr. Showalter: You might want to mention to Mr. Glowaczewski that we are also rigorously checking the Hampton Hill subdivision.

Mr. Astorino: I don't know how close that is. It is within the area. Regarding the Hampton Hill subdivision, we are in the process of monitoring them also. I don't know if that affected you.

Norman Glowaczewski: No. That did not affect me. I was over the 1000 feet.

Mr. Astorino: Ok.

Mr. Showalter: The man that is sitting next to Mr. Glowaczewski, I could remember him being at the meeting before. Keep in mind, the Planning Board is doing everything within its power to make sure the water isn't tapped out by any one person. Everybody will have water. You don't know what is under the ground. Nobody knows what is under the ground.

Mr. Astorino: Is there anyone else wishing to address the Normajean Fusco application? Let the record show no further public comment. We will adjourn the public hearing.

**Mr. McConnell makes a motion to adjourn the Normajean Fusco Public Hearing to the August 19, 2009 Planning Board meeting.**

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

Mr. Astorino: To all the residents that came out to the Normajean Fusco public hearing, this public hearing has been adjourned to the August 19, 2009 Planning Board meeting. There will be no further mailings sent to you. This is your notice.

**PUBLIC HEARING OF Brian and Melissa Singer**

Application for Final Approval of a proposed 2-Lot subdivision, situated on tax parcel S 66 B 1 L 75; parcel located on the western side of Briller Road 1000 feet south of Continental Road, in the CO zone, of the Town of Warwick, County of Orange, State of New York.

Representing the applicant: Kirk Rother, Engineer. Gary Goldstein, Attorney. Brian Singer, Applicant.

Connie Sardo: Mr. Chairman, we have just received the certified mailings for the Brian and Melissa Singer public hearing.

Mr. Astorino: Thank you.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
  - A. Project is within the Ridgeline Overlay District. Provide a viewshed analysis – Visual EAF Addendum and line-of-sight profiles – to the Town Planner’s specifications.
2. Applicant to discuss project.
3. Board to discuss site visit.
4. Provide certification by licensed land surveyor that all metes, bounds, and topography were developed through actual field survey and the date of that survey. Note the datum of the topographic survey.
5. Applicant proposes a common driveway on the currently unpaved portion of Briller Road. Revise typical section of roadway; common driveway section is 2” depth of top course asphalt on 8” depth of compacted subbase. Applicant to discuss proposed 14% grade on common driveway (12% is maximum permitted grade). The Board understands that there are deeded commitments on the part of others for the improvement of all or part of the proposed common driveway up to the turnaround. Show on the plans the limits of responsibility for common driveway improvements.
6. Regarding erosion control measures:
  - a. The common driveway typical section shows roadside swales “where applicable”. No swales are indicated on the common driveway between Briller Road and the turnaround, where the road grade varies from 7% to 14%. Applicant to discuss measures to control runoff at this location.
  - b. Spacing of check dams is inconsistent with note #2 of the Temporary Stone Check Dam Detail.
  - c. Show stabilized construction accesses on the ends of the Lot 1 and 2 driveways at the end of the common driveway.
  - d. Revise references on sheet 3 of 5 to details on sheet 6.
7. Show the proposed intersection of Blake Road with the common driveway.

**BEFORE FINAL APPROVAL:**

8. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Radon Reduction Notes and Private Road Use and Maintenance Agreement Notes.
9. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.
10. Pay parkland fees.
11. Pay outstanding review fees.

The following comment submitted by the Conservation Board:

Brian and Melissa Singer – None submitted.

The following comment submitted by the ARB:

Brian and Melissa Singer – None submitted.

Comment #1: Board to discuss SEQR.

A) Project is within the Ridgeline Overlay District. Provide a viewshed analysis – Visual EAF Addendum and line-of-sight profiles – to the Town Planner’s specifications.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: “The Planning Board has declared Lead Agency for this Unlisted Action. We are awaiting the submission of viewshed analysis (i.e. line-of-sight profiles and a Visual EAF Addendum) to confirm that there will be no or only a minimal impact on aesthetic resources due to the site’s location in the Ridgeline Overlay District.”

Kirk Rother: I had seen that comment for the first time yesterday. We have prepared a Visual Line-Of-Sight profile. I sent it to Zen and Connie today.

Mr. Astorino: Yes. We received that this morning.

Kirk Rother: You have all been there.

Mr. Astorino: That takes care of comment #1-A.

Comment #2: Applicant to discuss project.

Kirk Rother: The application before the Board is for a proposed 2-Lot subdivision. It is situated on approximately 13 acres of land. It is located in the CO zoning district. The 2 lots would be served by a private driveway entitled Briller Road. The applicant has been before the Zoning Board of Appeals. The applicant has obtained a 280a variance. We have completed the joint soil testing for the septic systems with the Town Engineer. We have done a site visit with the Planning Board. We are here before the Board to continue the process.

Comment #3: Board to discuss site visit.

Mr. Astorino: Does anything stand out at the Board? I know that we have discussed the road out there regarding paving and what have you. Does anything stand out to anyone that you would want to discuss? All right.

Comment #4: Provide certification by licensed land surveyor that all metes, bounds, and topography were developed through actual field survey and the date of that survey. Note the datum of the topographic survey.

Kirk Rother: Right: This was surveyed by Dan Yanosh in June of 2009. It is on the map.

Comment #5: Applicant proposes a common driveway on the currently unpaved portion of Brilller Road. Revise typical section of roadway; common driveway section is 2" depth of top course asphalt on 8" depth of compacted subbase. Applicant to discuss proposed 14% grade on common driveway (12% is maximum permitted grade). The Board understands that there are deeded commitments on the part of others for the improvement of all or part of the proposed common driveway up to the turnaround. Show on the plans the limits of responsibility for common driveway improvements.

Kirk Rother: The first part of the comment that has to do with the depth of material required, that would be no problem. As far as the 14% grade, I took a quick look at it before this meeting. Looking at the map (Mr. Rother displays a plan to the Board), the red line that I show would be a 12% grade. I think that would work out better.

Mr. Bollenbach: Where is that?

Kirk Rother: It is located right here.

Mr. Bollenbach: How long is that?

Kirk Rother: The black line on the map is the existing grade. We follow the humps in the road. It resulted in one area of 14% for roughly 50 feet. We just evened it out to 12%. That would be around a foot of fill. That would work better.

Comment #6: Regarding erosion control measures:

- a. The common driveway typical section shows roadside swales "where applicable". No swales are indicated on the common driveway between Brilller Road and the turnaround, where the road grade varies from 7% to 14%. Applicant to discuss measures to control runoff at this location.

Kirk Rother: Right. The road actually runs along a ridge. There is not a lot of water tributary to it that would run across it or result in erosion down it. Typically, we wouldn't show a swale on a road like this. It would just sheet flow off the two sides. However, given the fact that we are a private road with private property to the left and to the right, we would propose a swale on both sides to bring water down to Mr. Singer's property so that we would not be increasing runoff onto the neighbor's property. I want to back up to comment #5 the third part of the comment. The Board understands that there are deeded commitments on the part of others for the improvement of all or part of the proposed common driveway up to the turnaround. Show on the plans the limits of responsibility for common driveway improvements. I am not sure that I understand that except I that I think we were told at one point that officially the agreement between Mr. Singer and Mrs. Brilller was that Mrs. Brilller

was supposed to take on the responsibility for some of these improvements to the road. If this is approved and the road is constructed, Brian would most likely do all of the work.

Mr. Bollenbach: That could be clarified in the declaration.

- b. Spacing of check dams is inconsistent with note #2 of the Temporary Stone Check Dam Detail.

Kirk Rother: We will correct that.

- c. Show stabilized construction accesses on the ends of the Lot 1 and 2 driveways at the end of the common driveway.

Kirk Rother: Ok.

- d. Revise references on sheet 3 of 5 to details on sheet 6.

Kirk Rother: Yes.

Comment #7: Show the proposed intersection of Blake Road with the common driveway.

Kirk Rother: Ok.

#### **BEFORE FINAL APPROVAL:**

Comment #8: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes, Radon Reduction Notes and Private Road Use and Maintenance Agreement Notes.

Kirk Rother: Ok.

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

Kirk Rother: Ok.

Comment #10: Pay parkland fees.

Kirk Rother: Yes.

Comment #11: Pay outstanding review fees.

Kirk Rother: Yes.

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

Connie Sardo: Mr. Chairman, I just want to state for all of these applications this evening, we have not received any comments from the Conservation Board and the ARB.

Mr. Astorino: Thank you.

Theresa McQuade: I live on Briller Road. From what I could see on the maps, this would be coming through my septic tank and front yard where I have a leachfield. When I bought my property, there was a 20-foot easement for utilities. Did you receive my letter today?

Mr. Astorino: Yes. The Planning Board received a letter from Theresa McQuade, dated 7/14/09. Let's back up for a minute? What did you say is coming through your front yard?

Theresa McQuade: I have leachfields, which I stated in my letter. I have 5 acres of property. My corner acre was the only place where I was able to build 20 years ago. Where he is coming straight through, he is coming straight through my front yard. I have a buffer zone and screening from where the original road is.

Mr. Astorino: Are you talking about where he is coming through on the road? Kirk, could you explain?

Theresa McQuade: I am just very upset that Mr. Singer couldn't come to me about this.

Mr. Astorino: That is not his deal. He has to come to us. What he decides to do outside of here, we don't have any control of that.

Theresa McQuade: I think there is a difference in the maps from what I received 20 years ago. I did not have time to pull it out. I had crisis in my family.

Mr. Astorino: Are you talking about where Briller Road is or on Mr. Singer's property?

Kirk Rother: I believe Mrs. McQuade is talking about where the paved part of Briller Road ends and where we are extending it down to Mr. Singer's property.

Mr. Astorino: Yes. Is there a leach field under that road?

Theresa McQuade: It is not under the road. You are proposing to come towards the right and move my telephone poles. Is that correct?

Kirk Rother: That is correct.

Brian Singer: Correct.

Theresa McQuade: Ok. That is going through my front yard.

Gary Goldstein: I am going to show the Board the original subdivision map. It has in its legend the scale of 1" for 50 feet. This shows the septic system and the leach field on McQuade's property. This is the line on where the road goes. It is clearly at least 2", which would be more than 100 feet. If Mrs. McQuade had subsequently moved her septic system or moved her leach field within the easement area, that would be the wrong thing. The easement was there when she purchased the property. You are not supposed to put a permanent improvement within the easement area. I have also noted in Mrs. McQuade's letter that she submitted to the Board that she has a pool in her front yard and that she would be concerned about the lack of privacy if the road goes through. It is my understanding that

the Town Code requires any pool to go in the rear yard. It would be an illegal pool if it is in the front yard of the property.

Theresa McQuade: I had all of the paperwork done. That was done. I had it when I closed on my house.

Mr. Astorino: That would be something with the Building Department.

Mr. Singer: Do you have a permit for the pool?

Theresa McQuade: Yes. I had everything put into my name to get everything cleared up. It was all put there. I have been paying for it. The leach field was all done through the Town. I built the home myself.

Mr. Astorino: Was this the original leach field when the house was constructed?

Theresa McQuade: Yes. That was the original when the house was constructed in 1989. The whole screening was put there and everything. I had a different last name at the time. When I got divorced and took possession of the home, I had to go through everything to make sure the entire home improvements were put in and it would pass in order to get the mortgage.

Mr. Astorino: John, as far as the easement, does Mr. Singer have clear title on the easement going through for this road?

Mr. Bollenbach: He provided the title policy, yes.

Mr. Astorino: That is where our issue is now. We have to find out exactly where the easement lies. If there is improvement, there is screening that is in an easement that is owned by Mr. Singer, and then it would be Mr. Singer's. That would be something we would have to garner yet. Zen that would be some digging that you would have to do.

Kirk Rother: Are you saying that your septic is on your driveway?

Theresa McQuade: No. Looking at the photographs, my driveway ends right there. Right after this garbage can as you go through, there are all leach fields.

Kirk Rother: We would not be affecting that. Here is a picture that was provided with Mrs. McQuade's letter, dated 7/14/09. As the Board is familiar, we drove down this road. The utility pole is located right here. The proposed road is roughly in the center of that utility pole. It is 16 feet into her property. It is 16 feet wide. It follows the dirt road. I am just pointing out that there is the utility pole, trees, then Mrs. McQuade's driveway. I assume the septic leach field would be on the other side of the driveway. The septic tank would be typically close to the house.

Mr. Astorino: Ok.

Theresa McQuade: Does the 16 feet hit my pool deck?

Mr. Astorino: That was why I went back to the question of the easement. If you built it in the easement, that would be something that we would have to garner yet.

Theresa McQuade: Right. I understand that. But, I think there are two different easements. Where my pole was from the road, there was a 20-foot easement. That would be from the middle of the road to come in. At a minimum, I would be losing 5 feet.

Mr. Astorino: John, do you have the title on this to review?

Mr. Bollenbach: Yes.

Mr. Astorino: Ok. We will know where the easement is.

Brian Singer: It is shown on the map. We went over it several times. There are two easements running back to my property. There is a 25-foot easement.

Theresa McQuade: Right. That was the only thing that I have within my possession.

Mr. Bollenbach: They have been surveyed. It is located on the subdivision map that we have.

Mr. Astorino: You are comfortable where the easements are.

Mr. Bollenbach: That was where the surveyor had located them and put a seal on it.

Mr. Astorino: Ok. The only thing we have to garner is whether Mrs. McQuade is on your property.

Theresa McQuade: No. When I bought my property, there was the 25-foot easement in front of my home.

Brian Singer: Correct.

Theresa McQuade: Right.

Brian Singer: That was what transferred to me in my deed.

Theresa McQuade: The 25-feet. How does that come out 16 feet into my property?

Brian Singer: I have a 25-foot easement. I would only be using 16 feet of that easement. That is what I am telling you.

Mr. McConnell: It is not an addition to that.

Theresa McQuade: I understand that. If you look at the picture of the aerial view and look on this map, you are not using the old road.

Brian Singer: I am to the right of it, the 16 feet.

Gary Goldstein: Which is within the 25-foot wide easement.

Brian Singer: Where Phyllis put the road is not where my easement is.

Gary Goldstein: Right.

Mr. Astorino: Ok.

Theresa McQuade: I think you better check my maps to where your easement is.

Mr. Singer: Do you have the survey map?

Theresa McQuade: I will find it. I have been through a lot.

Brian Singer: I could show you a copy of a survey that she bought. Phyllis Briller subdivided this land in 1977. It shows the house. It is the original subdivision map where she built the house and put the leach fields.

Mr. Astorino: Ok. Do you have anything further?

Theresa McQuade: Just the impact of the screening. I don't understand why you would have to take this part of the road when you could go where the road is now and preserve the mountain residential that we bought and we can't subdivide because it is 5 acres. I don't understand how an extra house is being put on there when only one house could be put through. We are opening up a can of worms for the 60 acres behind him of who would be coming in and out of this road. That was why we let Phyllis be our spokesperson. She has sold us this property. She has protected us from the 60 acres.

Mr. Astorino: Was that in your deeds?

Theresa McQuade: No. It was just verbal. I had no problems when I bought my property from Phyllis. She was more than fair. The road was brought up to specifications for a private road. We were told that we could not subdivide because it was Mountain Residential Zone. We did not have enough property. The most we could get was one house.

Mr. Astorino: Was that because of the Town zoning?

Theresa McQuade: It was the Town zoning. This will open it up to the Blakes for them to come through and come in and out of our road with 60 acres.

Mr. Astorino: That would be something that would yet to be determined.

Zen Wojcik: Mr. Chairman, I would like to ask a question to Mrs. McQuade in order to clarify something. You refer it to as my utility pole. Do you own that pole? Is it a private pole?

Theresa McQuade: It is an O&R pole going to my home.

Zen Wojcik: But, it is not your own private pole.

Theresa McQuade: No. It is not my own private pole.

Zen Wojcik: Thank you.

Mr. Astorino: Is there anyone else wishing to address the Brian & Melissa Singer application?

Mark Mansfield: I live on Continental Road. Has all the grounds back there been surveyed for endangered species or anything like that? Has that all been checked? I have seen rattlesnakes on my property. I know that they are endangered species. I don't know where they come from.

Zen Wojcik: We were told one time by the DEC that anything above elevation 700 feet in Warwick had a potential for rattlesnakes. I think we are getting close to it. Usually when it is dry, the snakes drop down a bit. We would have to look back in our file. Usually, we are provided something from the DEC. That would be pretty comprehensive and sufficient. It would be up to the Board if they would want something additional.

Mr. Astorino: Ok.

Mr. Bollenbach: We would have to touch base with Ted and SHPO on that to see if there were any endangered or threatened species.

Mark Mansfield: The other thing that I was wondering about was going up to that property there is a grade, I don't know what the grade of the existing road is. It seems to be steeper than what is on the backside that you were discussing earlier. The road is narrow. This past winter when the propane truck came up, he backed out of Theresa's property as I was coming down my driveway. He slid down the hill until he went off the road. Fortunately, the back tandem tire ran up against a boulder. Otherwise, that guy would have rolled. At that point, it took 2 hours to try to get him out. There was no way a wrecker could get past him to the front side. It was a matter of putting down rock salt and boards in order to get him out of there. There is no real turnaround there unless they would go down to Mr. Singer's property before anybody could turnaround. We are talking about a situation where they would be putting extra houses back there. I was wondering if we would be compounding what would already be a bad decision in that regard. Is that relative to this?

Mr. Bollenbach: We could consider a turnaround. The Board has done that before.

Mark Mansfield: A turnaround wouldn't help coming out of Theresa's property. My driveway, they could turnaround at the top. I wouldn't recommend anybody bringing anything big up there that couldn't turnaround. Then, they would have a problem. If you build a turnaround further down, wouldn't they have to go onto Mr. Singer's property to be able to turnaround?

Mr. Singer: There is a turnaround proposed.

Mark Mansfield: In the back section. What I am saying is that you have an existing condition right now before you get in there, which is already a bad situation.

Gary Goldstein: A 280a variance was already granted. The Fire Department and the Police has already ok'd the access.

Mr. Astorino: They have been notified. Letters to the emergency services have already been sent.

Gary Goldstein: Right.

Mr. Astorino: There is a proposed turnaround at the end on his property.

Mark Mansfield: Ok. Is there a limitation on how many homes could go on a shared driveway in the Town?

Zen Wojcik: Yes. It is a shared driveway.

Mr. Bollenbach: The ZBA has already granted a variance for access to the property.

Mark Mansfield: What does that mean? Is that access for more than one home?

Mr. Bollenbach: It was a specific issue that the Planning Board raised to the ZBA. The ZBA was satisfied that the number of lots were within the limits of the Code.

Mark Mansfield: Is there a number? What is that number?

Mr. McConnell: As I understand it, the ZBA had seen the plans for two additional homes and issued the 280a variance for those two additional homes.

Mr. Bollenbach: Correct.

Mr. Singer: They did not address the other 60 acres at all.

Mr. McConnell: Right. That has not been in front of the ZBA.

Mr. Bollenbach: That is not before this Board either.

Mr. McConnell: No.

Mr. Astorino: No.

Mark Mansfield: Ok. Thank you.

Mr. Astorino: Is there anyone else wishing to address the Brian and Melissa Singer application?

Phyllis Briller: There is currently litigation in Orange County Court to reform the Brian Singer deed due to a scrivener's error. You should have already been previously made aware of that. My attorney has called Mr. Bollenbach. He also faxed him a letter. If you have not received a copy of the letter, I have one with me tonight. In doing so, he asked that this public hearing be adjourned or it be rejected until such time as the litigation can take place. Are you aware of that or not aware of that?

Mr. Astorino: Yes. We have it.

Mr. Bollenbach: It is a civil matter. There has been no stay issued by the court. Until that time, this matter could proceed before the Planning Board.

Phyllis Briller: Ok. Here is the problem. Because of the litigation, I cannot speak freely with respect to the Brian Singer deed or with respect to Brian Singer's easement. That is obviously the source of the deed reformation action. I also was hit with a \$250,000.00 suit for attempting to influence the Board. I would not want to have my words taken out of context. If the public hearing is to continue, if you are going to make a decision, then you are going to make a decision without having all of the full facts in front of you. Because of the ongoing litigation, I am also going to tape tonight's meeting. When Brian and I discussed the purchasing of his property, the 13 acres, I told him in my opinion that it might support 2-3 homes. If he wanted to build 1-home, which he said he wanted to do, I would be willing to give him an easement. If he wished to build multiple homes, we needed to talk in terms of Briller Road becoming a public road. I had reserved an easement across the parcels as I have sold to him for the purposes of ingress and egress, for the purpose of construction of utility lines, and also for the purposes of a public road. That was the only reason I reserved easements across the parcels. I sold them. Brian told me, as he told his/my neighbors at a meeting that his intent was only to build 1-house. Based on that, I trusted him. I sold him the property. Subsequently, he has told the ZBA that he changed his mind. That is certainly his right. The problem is that I haven't changed my mind. The changes that the Singers are attempting to bring into the neighborhood are going to be significant and detrimental to me as well as to my neighbors. Could we talk about SEQR kinds of issues? The first item would be logging. The Singer's 13-acre parcel is heavily logged. I believe you have noticed that. I know from personal knowledge and having talked to family members who owned the land previously, the parcel has not been logged in the last 90 years, probably not in the last 130 to 150 years. Mark Malocsay who sits on the ZBA, steps down from the ZBA when the Singer's application was heard. He said that it would be a conflict of interest and he was expected to be awarded work as a result of the Singer's application. Mark Malocsay is an experienced forester. My concern is with removing trees and cutting them down, there will be SEQR issues both because of the maturity of the trees and also because of possible damage to Briller Road in bringing the logging trucks out.

Mr. Astorino: Number one, we don't have an application from Mr. Singer for logging. Number two, it is located within the Ridgeline Overlay. He would have to comply with the number of trees, species, and diameter. If Mr. Singer goes up there and attempts to log per say, with the restrictions of the Town of Warwick Code, it would be stopped. It can't be a logging operation. Even if he gets approval, he would have to work within the Ridgeline Overlay requirements, as does everyone in the Ridgeline Overlay. Just to keep you informed, there is not an application before this Board for logging. He would have to meet the Ridgeline Overlay requirements which would be on his map.

Phyllis Briller: I am glad to have this on discussion. Are they expecting to have additional devastation to the property or destruction to the property outside of the 1/4-acre per house?

Mr. Astorino: He would have to meet the Ridgeline Overlay requirements. If he goes beyond that, he would be cited or stopped work.

Zen Wojcik: Mr. Chairman, Mrs. Briller mentioned 1/4-acre restriction. The 1/4-acre restriction would be if you or I owned a piece of property and decided to clip 1/2-acre worth of trees, you could only cut 1/4-acre. If you or I were to get approval from the Planning Board to build a house, the Code allows you to clear the land that is required for the house, septic field, and the road. That is part of the reason why we ask for a limit of disturbance on the plans.

Mr. Astorino: Again, they are within the Ridgeline Overlay. There are restrictions.

Zen Wojcik: It would have to be restricted within that. It is certainly more than ¼-acre of what is allowed in the Code.

Mr. Astorino: Ok.

Phyllis Briller: Perhaps the applicant or the engineer could tell us, what is the amount of disturbance expected?

Zen Wojcik: (Mr. Wojcik reviews the plans.) On Lot #2, it would be .94 acres. On Lot #1, it would be .75 acres.

Phyllis Briller: So, we are talking about 1-1/2 acres out of 13 acres.

Zen Wojcik: Yes.

Mr. Singer: Does that include the driveway.

Zen Wojcik: That includes the driveway.

Phyllis Briller: Ok. Given that this has no significant amount of trees taken down in at least 100 years, what does the applicant plan to do with all of these trees?

Mr. Astorino: That would be the applicant's option.

Mr. McConnell: Do we need to ask that question and get an answer to that question?

Phyllis Briller: You don't typically have applicants come before you that have that level of mature tree growth.

Mr. McConnell: The Code speaks to what he is permitted to do.

Phyllis Briller: Yes.

Mr. McConnell: If he would be going to clear trees within the disturbance of what the engineers and the Code says is appropriate, then fine.

Mr. Astorino: And, he follows the Ridgeline guidelines.

Mr. McConnell: Yes, to clear for a house, driveway, septic, leachfields, and so on. I wouldn't care if he cut it up and burns it in his fireplace or sells it to somebody down the road.

Phyllis Briller: I wouldn't care either.

Mr. Singer: What Phyllis is saying is that she doesn't want them to take those logs down Briller Road.

Phyllis Briller: Exactly. Thank you.

Mr. Astorino: That is a very valid point. If you would be going in with logging equipment and destroy the road, maybe there should be a note on the plan.

Mr. Bollenbach: You would be having other trucks coming in. You would be having concrete trucks and other vehicles coming in. It is designed for that sort of use.

Mr. McConnell: I don't think 1.5 acres would constitute commercial logging to the point where we need to be concerned about the impact on the roads.

Phyllis Briller: Gentlemen, there is precedence to why I am asking the question. In 1997, we did have a logging operation running over that road.

Mr. McConnell: Was that from this applicant?

Phyllis Briller: It was from an adjacent applicant.

Mr. Singer: That was the Blakes.

Phyllis Briller: Running from the same road. We had a public hearing that went on for 2 months. The adjacent applicant for the logging operation at that time said that the Federal Agency...

Mr. McConnell: Could I stop you? We don't have a logging application in front of us. I have heard nothing about a commercial logging operation proposed. We are looking at a subdivision proposed to build 2 houses. That is what we have in front of us. To speculate on what somebody had done 12 years ago, is irrelevant.

Phyllis Briller: It is not irrelevant when you look at the potential damage to Briller Road.

Mr. McConnell: For a logging operation on 60 acres, I would agree with you. We are not dealing with that. We do not have that in front of us.

Phyllis Briller: With respect to logging, your anticipation would be that there would be no logging.

Mr. Astorino: We have no logging application in front of us.

Phyllis Briller: Ok. I have noticed on the plans that there was no indication with respect to the size of mature trees on that property, which there typically would be if there were A stand of mature trees. Would a Biologist or another Licensed Professional go out and check?

Mr. Astorino: Zen, isn't there a certain caliper of trees?

Zen Wojcik: Yes.

Mr. Astorino: That would be within the Ridgeline Overlay.

Zen Wojcik: Yes. It is a very good point. I will bring that up to Ted.

Mr. Astorino: Ok.

Phyllis Briller: I assume you will extend the public hearing.

Mr. Astorino: We will make that decision when we make our recommendations.

Phyllis Briller: So, you will talk to Ted Fink about the need to document the mature trees that are on the property.

Mr. Astorino: If the Board deems it necessary. I am not going to make the call. We haven't made a decision yet. We have heard your input. Zen brought a point to us. The Board will then make a decision.

Phyllis Briller: There is a 2<sup>nd</sup> SEQR issue regarding the environmental impact on wetlands. There are 4 points of concern here. I believe they were all addressed in a letter that I wrote to the Board on July 10, 2007. There is a stream that runs along the length of my property. It is a protected stream. The applicant and Mr. Wojcik talked during the workshop about moving or the relocation of the portion of the Blake's easement from what is now the turnaround to the Blake's property. I did not hear that discussed tonight. I am not exactly sure what the implications of all of that are.

Zen Wojcik: Mr. Chairman, could I correct a statement that was made?

Mr. Astorino: Yes.

Zen Wojcik: On the map, there is a Blake Road, which I believe is Blake's driveway. That connects to the end of Briller Road. Since Mr. Singer is showing a relocation of the road, I said to please make sure there is some connection over there for Blake Road to connect to Briller Road as it does right now.

Phyllis Briller: Zen, when you say Briller Road, do you mean the unpaved extension?

Zen Wojcik: Yes.

Phyllis Briller: Ok.

Zen Wojcik: That was it.

Mr. Astorino: Ok.

Phyllis Briller: Assuming that Mr. Singer has the right to do this, which he doesn't by deed. If that would be relocated that would be within 50 feet of a protected stream.

Zen Wojcik: My impression is that there is an easement right now for that driveway. The comment's point is that we should not be leaving it hanging.

Phyllis Briller: The Blakes do have a 14-foot to 15-foot easement.

Zen Wojcik: It is not the point as to how much they have or where it was. There is a connection now just like all of the other driveways. If he moves something, it should be maintained regarding those connections.

Phyllis Briller: Ok.

Mr. Astorino: That is the only point. If that easement goes through and the other unpaved portion is paved, it would connect to the other driveway.

Phyllis Briller: If he moves, and it is within that 50 feet of the protected stream, that would be something he would need a DEC permit for.

Zen Wojcik: It depends upon the protection level of that stream and what the DEC would have to say.

Phyllis Briller: Ok. I am just raising the issue. Thank you. The second point where there may be a wetland impact is on the eastern side of the applicant's parcel, I also noted that in my July 10, 2007 letter. That eastern edge of the property is boggy. It use to be a stream. It could be argued that it was filled in some time ago. When the subdivision originally went to the County, that was a County comment. My concern is that there should be a wildlife biologist or someone who is familiar with wetlands to delineate that particularly if there would be any construction or logging or anything devastation of any other kind within that area. The third point of wetlands would be the applicant's northwest corner, which is boggy. That is an area that is shared with Mrs. McQuade's property where the two properties together come down and the resulting boggy water becomes a tributary to Longhouse Creek, which is also a protected stream. At the time, a biologist is looking on the eastside they should also look on the west corner as well. The fourth area, if any construction is entertained at the foot of Briller Road where it connects onto Continental Road, this area would also be within 50 feet of the protected steam that runs underneath Continental Road. There is a potential impact on existing wells. I have not heard you mention wells at all. In this area there is a great disparity in the depth and the yield of water from the wells. In our particular area, one neighbor could hit 20 gallons per minute and another neighbor could be hitting such a small yield that they would have to hydro-fracture to get anything that would be reasonably associated with a normal well.

Zen Wojcik: Mrs. Briller, do you know how deep your well is?

Phyllis Briller: I have a note in my files that it is 155 feet deep. I think I might be wrong. It might be deeper than that. My yield is just over 5 g.p.m.

Zen Wojcik: Thank you.

Phyllis Briller: The Singer application will also have a significant impact on the quality of life of the neighbors who live adjacent to Briller Road. The 3-Lot subdivision approval plan that was shown to you by the Singers, I wasn't able to see which one it was. I assume it was approved in 1977. It was not an asbuilt. While it was shown with 3 houses, Theresa was 10 years away from building her house and septic. Assuming the septic, that is there was totally inappropriate... When that septic was constructed, my house was built soon after that. My house is not exactly shown on that approved drawing. Subsequent to the approved survey, I had another survey done in 1991 by Frank Hoens. One of the reasons why I am giving this survey to you tonight and the Singers are well aware of it because I have given it to them... (Mrs. Briller submits a photocopy of a signed or survey plan titled Phyllis Briller by Frank M. Hoens, Professional Land Surveyor and dated May 14, 1991, for the record. The plan

was viewed by Messrs. Bollenbach and Wojcik before proceeding). It is an accurate depiction of where my house is, which is less than 30 feet from Briller Road. It is also up a steep embankment. Every car that goes by, every construction vehicle, every motorized 2-wheel with any decibel level constructed goes by my house which I hear inside and outside my house. I do not and will not have that kind of traffic continuing along in front of my house. Mr. Singer is well aware of that. The impact is not only on me. It is also on others as well.

Mr. McConnell: How would that impact be reduced if it was a public road? You would still be 30 feet away from it.

Phyllis Briller: That is true. I could have the choice of moving at that point. If it were a public road, I wouldn't have the additional cost of maintaining a private road.

Mr. McConnell: I am thinking about it as a notion of noise levels.

Phyllis Briller: My option was not to have more than one more house on that road.

Mr. Astorino: I guess that would be your suit with Mr. Singer.

Phyllis Briller: It is a matter of public record that there was a scrivener's error in the deed that was delivered to Mr. Singer that concerns the 14-foot to 15-foot easement that was deeded to him.

Mr. Astorino: That is fine. As far as your house being 30 feet from the road, I agree with Mr. McConnell on whether it was a public road or a private road, it would still be 30 feet from the road.

Mr. Showalter: It doesn't matter.

Mr. Astorino: That is your issue. I understand your quality of life. You said, if you let him build one house, one house would be fine with you. I am not going to get back into your whole lawsuit.

Phyllis Briller: Ok. It is not only my house and my life that is affected. There is a steep embankment. I have put up as much screening as I could figure out on how to do. But, I still see every car that goes by.

Mr. Showalter: Mrs. Briller, didn't you think about this? I am assuming you owned the land behind you and you sold off these lots over time. That would be your prerogative. However, when you did that, did you not think of in the future that it would create traffic 30 feet from your home because of where your home is situated on your lot? You have sold off these other lots. Now, there are people living there. If you are unhappy about the people living there, maybe that should have been considered earlier. Now, you cannot change what has been done.

Phyllis Briller: I absolutely wouldn't change my neighbors. I sold the parcel of land of 13 acres to a couple whose parents I have known for years. They are wonderful Warwick families. I also assumed that they would be very nice neighbors.

Mr. Bollenbach: Phyllis, what are your other concerns?

Phyllis Briller: The next concern that I have is if the applicant proposes to straighten out Briller Road over at Theresa McQuade's property, there will be additional vehicle speed on the road. Right now, my house is the only flat level place that is paved on Briller Road. Vehicles come up flying into the road right up to Theresa's house. Then, you hear their brakes squeal. Do they hang an immediate right or do they make a slight right or left to go down to Blakes or Singers.

Mr. Astorino: That would be a defined easement. What you are talking about in your opinion is yet to be determined. John, from what you had told me, it is on the map by a signed and sealed surveyor.

Mr. Bollenbach: It is located within the easement.

Mr. Astorino: If that is the case, then they have the legal right to put the road there. Is that correct?

Mr. Bollenbach: Correct.

Phyllis Briller: By allowing this, you are going to continue to increase the amount of speed that is on the road. The applicant could look at other ways of constructing one house certainly. It should be noted that, by deed, the applicant is required to obtain my permission to make any changes to a 14-foot or 15-foot easement that was deeded. I would like to talk about Bio-Diversity. I have both bats and shagbark hickory on my property. I assume it is also on adjacent parcels. I am suggesting that a Professional Biologist or someone else that was trained in recognizing Indiana bats and/or hickory trees look for these while they are mapping out all of the rest of mature trees. We also have our share of timber rattlers. Timber rattlers are the way of life when you live up there. If 700 feet is the magical number, I think the Mansfield's house is at either 800 feet or 1200 feet. I can't remember anymore. But, we are pushing it. If we have rattlers, it could be possible that Mr. Singer could get rattlers also. I don't know if there is a nest. It is something you should be aware of. I would like to discuss the impact on Town Zoning Laws. The percent of grade over the paved portion of Briller Road, particularly the percent of grade from my house to the end of pavement, it was discussed in front of the ZBA. It was decided then that it would be an issued that would be considered by the Planning Board. The applicant has furnished a proposed percentage of grade on the unpaved portion, but not the percent of grade on the existing paved portion. This would be specifically the 300 feet between my house and Theresa McQuade's house. In my opinion as well as others, it is equally as steep, on the paved portion as well as it is on the unpaved portion. When the Town Planning Board approved that 3-Lot subdivision in 1977 that 300 feet steep portion was only approved for 2 houses, lots 2 and 3. It was not approved for the 5 houses that the applicant is now requesting that you approve the entire area to.

Mr. McConnell: What was the percentage grade on that section?

Phyllis Briller: They have not determined it.

Mr. McConnell: Did you determine it when you got the original subdivision? You said it was discussed at that point.

Phyllis Briller: No. I said when the applicant was sent to the ZBA.

Mr. McConnell: After that, you said something about in 1977.

Phyllis Briller: In 1977, we had a 3-Lot subdivision that was approved. Two of the houses will go up that grade.

Mr. McConnell: Right. That subdivision did not say what that grade was?

Phyllis Briller: No. They did not ask questions like that in 1977. What was approved was a 3-Lot subdivision. Two houses were going up that. Not the cars from 5 houses, which the applicant is suggesting now.

Mr. McConnell: A lot has changed since 1977.

Phyllis Briller: Assuming that you are approving the applicant's 2-Lot subdivision with access all the way from Continental Road all the way to his property, if you are, I think you would then have to look at the entire road. The applicant is not conforming to the requirement of the open development area. In 1977, the original application that we made was for an open development area. We could not comply with the requirements for the open area development. Two of those three lots had no road frontage. Because we could not comply with it, we went back to the drawing board and submitted a 2<sup>nd</sup> development map. You have that in front of you. It was approved. That means all 3 parcels in our 3-Lot subdivision has road frontage. It would appear to me that the Singers should be held to the standards of the open development area for their 2-Lots, which neither of which has road frontage. Although all 4 houses in the front use Briller Road by convention because it is there and convenient, all 4 of us have the ability to have our own driveways if we chose and not to use a common private road at all.

Mr. Astorino: That would be your choice if you decided to go back to the Town and get a permit to come out onto Continental Road.

Mr. Bollenbach: It was approved by the Planning Board that they do have a common access.

Phyllis Briller: With respect to the Singer's application, since it is obviously an open development area with 2 lots that don't have road frontage, not a 7-lot application where 4 of them already have road frontage.

Mr. Astorino: You are talking about something back in 1977 with the open area. We are looking at what we have in front of us now.

Phyllis Briller: Why are not the Singers being held to the standards of the open area development? I understand they were sent to the ZBA.

Mr. Astorino: They received a 280a variance through the ZBA.

Mr. Bollenbach: Yes. They did. They got the 280a because they did not have access on the Town Road.

Phyllis Briller: Why is the Planning Board not holding them to the standards of an open development area?

Mr. Bollenbach: Or, it could be a common driveway.

Mr. Astorino: Which is permitted in the Code.

Mr. Bollenbach: Or, a private road. There are different classifications. Zen, what section of the code has the specifications for common driveways and private roads?

Zen Wojcik: It is Section 164-41.2. It is the section after the cluster subdivisions.

Phyllis Briller: The Planning Board has signaled that it intends to waive the 6-lots on a shared driveway rule.

Mr. Astorino: John, I don't think we have to. They received a 280a variance.

Mr. Bollenbach: They received a 280a variance.

Mr. Astorino: There is no need to waive it.

Mr. Bollenbach: That issue was already addressed by the ZBA.

Phyllis Briller: They didn't address 7 houses on a common road. When will the Planning Board draw a line in the sand and say how many houses could be on a private road?

Mr. Bollenbach: You could get up to 18 with a single access. If a boulevard is provided, it could be more.

Phyllis Briller: But, this is a shared driveway. You do have an application from the Blakes currently with the Board for a 2-lot subdivision.

Mr. McConnell: This is not about the Blakes.

Mr. Astorino: Mrs. Briller, the Board will take your question under advisement and it will make a decision when we see fit to make a decision.

Phyllis Briller: The applicant will be required to pave the first 25 feet of the driveways in his proposed subdivision and the length of the shared driveways. The 1977 3-lot subdivision approval required to put in a 16-foot wide gravel covered roadway. We had a common road maintenance agreement at that time in with that. There is no requirement on the part of any of the existing neighbors to pave that private road. While it is paved now, it was paved because in 1995 the neighbors unanimously agreed that they would be willing to pave it. They had all then just built their homes. That road is now nearly 15 years old, the paving is nearing end-of-life.

Mr. Astorino: If Mr. Singer built one home, you would still have all of the construction equipment and trucks going through. You stated that in your mind that would be ok for him to do that. That road does not seem to be in disrepair. We have been up there. It seems to be in good shape. All roads need maintenance. Is there a maintenance agreement with your neighbors as of now to say in 5 years from now to resurface? Would you just let that road fall apart?

Phyllis Briller: In 5 years, if the applicant is not required to pave or repave the first 1000 feet, you would be looking at a Buttermilk Falls Road #2.

Mr. Astorino: Is there a maintenance agreement amongst the neighbors that are there right now to maintain the road, plow and salt the road for ingress and egress?

Phyllis Briller: There is a general maintenance agreement.

Mr. Astorino: John, do we have a copy of that?

Phyllis Briller: Yes.

Mr. Bollenbach: I have seen several.

Phyllis Briller: I will provide another if you need it. It was written in 1977. There is nothing in there that would require any of us to pave the road or to continue to keep it paved.

Mr. Astorino: Ok.

Phyllis Briller: The applicants have no utility easements servicing their property. I don't know if this Board has ever approved subdivisions with no utility easements servicing the property. This happens to be one of them. You should also be aware with respect to that that the applicant does have a right to come in and go out. In my definition, he has about 14 to 15 feet. He has ingress and egress from Continental Road to his property. He does not have a utility. He does not have the right and ability to install utility services or move utility poles particularly when they are on someone else's property.

Mr. Astorino: Do you have documentation to that fact that you could supply to the Board?

Phyllis Briller: There are 3 utility easements across that land. Yes, I have documentation for all three.

Mr. Astorino: Do you want to supply that to the Board?

Phyllis Briller: Of course. I would be glad to.

Mr. Astorino: Does it state that Mr. Singer has no utility easement?

Phyllis Briller: Yes.

Mr. Astorino: Ok.

Phyllis Briller: I could also provide to you a letter that my attorney has written to his attorney on that.

Mr. Astorino: That would be fine.

Phyllis Briller: There was another question that was not asked of the applicant. He said that he would be relocating two of the poles on Mrs. McQuade's property. Where will he put them?

Mr. Astorino: That would be O&R's call.

Phyllis Briller: They would only have 20 feet.

Mr. Astorino: That would be up to O&R. Mr. Singer, they are not your poles, they are O&R's poles. Is that correct?

Brian Singer: Those poles would be O&R's poles.

Phyllis Briller: Would the applicant have to have a decision from O&R before you could give him an approval?

Mr. Astorino: I don't believe so. O&R would have to make the call if they want to move a pole or not. The property would be little use to Mr. Singer if he couldn't get any electric service to it.

Mr. McConnell: It looks like there are poles there.

Phyllis Briller: There are poles there.

Mr. Astorino: Dennis, as far as electric goes, if the man wants to live without electric, that would be his option. That is not our call.

Phyllis Briller: The rest of my comments deal with the Blake easements.

Mr. Astorino: Why don't you submit them to Connie? We will get them out to the Board. I assume the Board would adjourn this with a date. We need to do some digging on the information we heard this evening. Do you have anything further?

Phyllis Briller: I was a little puzzled by Mr. Singer's comment at the workshop that Mrs. Briller had moved the road. He was now putting it back where he felt it should be. I don't know if he would like to elaborate on that.

Mr. Astorino: That would be up to him. I wasn't at that work session. John has the title. We will check that out. Mrs. Briller, if you have some information, please supply it to the Board ASAP. Is there anyone else wishing to address the Board on the Brian & Melissa Singer application?

Theresa McQuade: Please make sure on my screening that is out there that it is truly their property before it gets ripped out.

Mr. Astorino: That is exactly what we will do. If I were you, I would definitely check your permits for your structures in your front yard.

Theresa McQuade: I have my permits.

Mr. Astorino: Ok. If they are not on Mr. Singer's property or what have you, I don't know. We will check that out. Do any Board members or Professionals have any comments?

Mr. Bollenbach: Maybe, you could get copies of the permits and drop them off for the engineers.

**Mr. McConnell makes a motion to adjourn the Brian & Melissa Singer Public Hearing to the August 5, 2009 Planning Board meeting.**

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

Mr. Astorino: To the residents that came out, the next public hearing will be on August 5, 2009. There will be no other notices sent out. This is your notice.

**Review of Submitted Maps:*****Warwick Isle Corp.***

Application for Final Approval of a proposed 30-Lot cluster subdivision + 3-Affordable Homes subdivision and Special Use Permit for the affordable homes; situated on tax parcel S 3 B 1 L 6.21, property located on the northern side of Merritts Island Road at the intersection with County Route 1, in the SL zone, of the Town of Warwick. Preliminary Approval was granted on, 6/21/06.

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, LAST REVISED 3/17/06**

3. Planning Board achieved consensus on Yield Plan, 6/21/06.

**CLUSTER PLAN, LAST REVISED 10/8/08**

4. Use galvanized wire mesh on proposed perimeter fence.
5. Drainage ditches (draining to Wallkill River) around Nursery property continues through Open Space Area "E". Agricultural operations are dependent upon these ditches remaining clear and flowing. Applicant to consider granting a maintenance easement for the adjoining farmer to continue maintaining the ditches.
6. List all easements with recording information on sheet 1. Include Open Space, Drainage, Curtain Drain and all other easements.
7. Revise the Road and Boulevard cross section details for limits of Right of Way consistency. Also revise paved roadway widths to be consistent with roadway layout in plan sheets.
8. Per §A168-10D, testing of the road subgrade and design of the pavement is required. Provide test results and pavement design calculations for Town Engineer's review and approval before final approval.
9. Regarding Special Condition 100 (§164-46J(100)) – Affordable Housing:
  - a. 100d – Provide renderings for minimum design and construction standards for Planning Board approval.
  - b. 100g – Provide a marketing plan for the Town Board and Planning Board approval.

**SWPPP REPORT, DATED MAY 2006**

10. Set of plans references the old NYSDEC General Permit for Stormwater Discharges from Construction Activities "GP 02-01". Update per the new General Permit "GP 0-08-001" requirements. Provide a revised SWPPP narrative and NOI. Provide a sign-off from the NYSDEC-OPRHP that all issues regarding historic and/or archaeologically significant resources have been satisfied.
11. The stormwater management facilities proposed for this parcel have been designed in accordance with the NYSDEC Design Manual. However, the design concept does not include Low Impact Design (LID) and Better Site Design (BSD) features encouraged by NYSDEC under their current General Permit. The applicant should consider integrating

LID/BSD concepts into their site design without the wholesale revision of the previous design. Consideration could be given to measures that may result in reductions of impervious cover (i.e. reducing driveway widths) and measures that will provide water quality and quantity treatment closer to the source to reduce the size of the stormwater management ponds.

**The following comments are from the review of the last SWPPP submitted.**

12. SWPPP text indicates P-1 and P-2 ponds, and the NOI indicates P-3 ponds. Be consistent.
13. Drainage Area maps are not included in pocket of the SWPPP report.
14. Detention Pond East: the 25-foot pond buffer appears to go through the forebay, berm, and outlet outfall.
15. Detention Pond West: the 25-foot pond buffer appears to go through the driveway, property lines, berm, and roadway.
16. Provide the outlet discharge for proposed "Water Quality Swale C."
17. How is impervious area in Lot 2 being treated for Water Quality.
18. Provide Rock Outlet Protection design for the proposed pond outlets and for all proposed water quality swale outlets. A detail is provided; however show location where would they be installed in the plans.
19. Provide design calculation in the report for the Emergency Spillway detail shown under drawing sheet 11 of 13 of the plan set. Also provide dimensions on detail per the design calculations.
20. The report under Section III, describes that, "for lots lying downstream of the proposed roadway for which stormwater run-off cannot be diverted into the proposed water quality ponds will be accomplished by infiltration chambers..." The plans show proposed water quality swales to be installed at these lots. Applicant to clarify.
21. Provide all the information required in the NOI form attached to the report.

**BEFORE FINAL APPROVAL:**

22. Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Aquifer Protection Overlay Notes, Private Road Use and Maintenance Agreement Notes, Open Space Conservation, Homeowner's Association and Maintenance of Stormwater Management Facilities Notes.
23. Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.
24. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and corners of open space.
25. Applicant to provide 9-1-1 addressing.
26. Pay parkland fees.
27. Pay performance bond, landscaping bond and construction inspection fee.
28. Pay outstanding review fees.

The following comment submitted by the Conservation Board:

Warwick Isle – None submitted.

The following comment submitted by the ARB:

Warwick Isle – None submitted.

Comment #1: Board to discuss SEQR.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: "The Planning Board acted as Lead Agency on this Type I action and issued a Negative Declaration prior to Preliminary approval. If there is new information on any potential environmental impacts or if there are project changes that may result in potential environmental impacts, then the Planning Board could amend the Negative Declaration or rescind it and then issue a Positive Declaration. We should await the submission of further information from the applicant regarding these issues. My understanding is that Tectonic's list of comments has included potential SEQR issues that need to be addressed in this Final Subdivision application."

Comment #2: Applicant to discuss project.

Kirk Rother: The application is for a proposed 30-lot subdivision. It is situated on approximately 83 acres of land. The application had received preliminary approval. Since that time, we have secured OCHD approval. It took a long time in the making. There have been no changes to the plans, lot configuration, roads, etc... We are back before the Board to start the final approval process.

#### **YIELD PLAN, LAST REVISED 3/17/06**

Comment #3: Planning Board achieved consensus on Yield Plan, 6/21/06.

#### **CLUSTER PLAN, LAST REVISED 10/8/08**

Comment #4: Use galvanized wire mesh on proposed perimeter fence.

Mr. Showalter: We had discussed at the Work Session that using vinyl clad would be better.

Mr. Astorino: I agree with you. Would you be alright with that?

Kirk Rother: Yes.

Mr. Astorino: Any color?

Mr. Showalter: A dark color. We kind of agreed with black.

Mr. Singer: Since I know a lot about fences, it comes in all sorts of gauges. Vinyl clad is very expensive. I think you would need at least a 12-gauge wire for the vinyl clad to hold up.

Mr. Showalter: Mr. Rother, make a note that you need a 12-gauge black vinyl clad.

Mr. Singer: I am not sure you could get it in black. I think it would be green.

Mr. Astorino: Green would be fine.

Mr. Singer: Vinyl coated wire is green. They don't make it in black. The only one that makes it black is chain link. We are not talking about that here.

Comment #5: Drainage ditches (draining to Wallkill River) around Nursery property continues through Open Space Area "E". Agricultural operations are dependent upon these ditches remaining clear and flowing. Applicant to consider granting a maintenance easement for the adjoining farmer to continue maintaining the ditches.

Kirk Rother: Right. This came off at preliminary. I believe we agreed to provide the easements.

Comment #6: List all easements with recording information on sheet 1. Include Open Space, Drainage, Curtain Drain and all other easements.

Kirk Rother: Ok.

Comment #7: Revise the Road and Boulevard cross section details for limits of Right of Way consistency. Also revise paved roadway widths to be consistent with roadway layout in plan sheets.

Kirk Rother: Ok.

Comment #8: Per §A168-10D, testing of the road subgrade and design of the pavement is required. Provide test results and pavement design calculations for Town Engineer's review and approval before final approval.

Kirk Rother: No problem.

Mr. Bollenbach: Has that been already provided?

Zen Wojcik: No.

Kirk Rother: What is that?

Mr. Bollenbach: Comment #8, you said no problem. That needs be done before final approval.

Mr. Astorino: That has to be done before final approval.

Kirk Rother: We will do it.

Mr. Bollenbach: How long?

Kirk Rother: It won't take long.

Comment #9: Regarding Special Condition 100 (§164-46J(100)) – Affordable Housing:

- a. 100d – Provide renderings for minimum design and construction standards for Planning Board approval.

Kirk Rother: Yes.

- b. 100g – Provide a marketing plan for the Town Board and Planning Board approval.

Kirk Rother: Ok. I am ok with the SWPPP comments.

### **SWPPP REPORT, DATED MAY 2006**

Comment #10: Set of plans references the old NYSDEC General Permit for Stormwater Discharges from Construction Activities "GP 02-01". Update per the new General Permit "GP 0-08-001" requirements. Provide a revised SWPPP narrative and NOI. Provide a sign-off from the NYSDEC-OPRHP that all issues regarding historic and/or archaeologically significant resources have been satisfied.

Comment #11: The stormwater management facilities proposed for this parcel have been designed in accordance with the NYSDEC Design Manual. However, the design concept does not include Low Impact Design (LID) and Better Site Design (BSD) features encouraged by NYSDEC under their current General Permit. The applicant should consider integrating LID/BSO concepts into their site design without the wholesale revision of the previous design. Consideration could be given to measures that may result in reductions of impervious cover (i.e. reducing driveway widths) and measures that will provide water quality and quantity treatment closer to the source to reduce the size of the stormwater management ponds.

### **The following comments are from the review of the last SWPPP submitted.**

Comment #12: SWPPP text indicates P-1 and P-2 ponds, and the NOI indicates P-3 ponds. Be consistent.

Comment #13: Drainage Area maps are not included in pocket of the SWPPP report.

Comment #14: Detention Pond East: the 25-foot pond buffer appears to go through the forebay, berm, and outlet outfall.

Comment #15: Detention Pond West: the 25-foot pond buffer appears to go through the driveway, property lines, berm, and roadway.

Comment #16: Provide the outlet discharge for proposed "Water Quality Swale C."

Comment #17: How is impervious area in Lot 2 being treated for Water Quality.

Comment #18: Provide Rock Outlet Protection design for the proposed pond outlets and for all proposed water quality swale outlets. A detail is provided; however show location where would they be installed in the plans.

Comment #19: Provide design calculation in the report for the Emergency Spillway detail shown under drawing sheet 11 of 13 of the plan set. Also provide dimensions on detail per the design calculations.

Comment #20: The report under Section III, describes that, "for lots lying downstream of the proposed roadway for which stormwater run-off cannot be diverted into the proposed water quality ponds will be accomplished by infiltration chambers..." The plans show proposed water quality swales to be installed at these lots. Applicant to clarify.

Comment #21: Provide all the information required in the NOI form attached to the report.

### **BEFORE FINAL APPROVAL:**

Comment #22: Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Aquifer Protection Overlay Notes, Private Road Use and Maintenance Agreement Notes, Open Space Conservation, Homeowner's Association and Maintenance of Stormwater Management Facilities Notes.

Comment #23: Petition the Town Board to establish a Drainage District for the maintenance of stormwater management facilities.

Comment #24: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners and corners of open space.

Comment #25: Applicant to provide 9-1-1 addressing.

Comment #26: Pay parkland fees.

Comment #27: Pay performance bond, landscaping bond and construction inspection fee.

Comment #28: Pay outstanding review fees.

Mr. Astorino: We will list the SWPPP comments 10 through 21 for the record. We will also list the Final Approval comments 22 through 28 for the record. Do any Board members have any comments? Zen, could we set this for a final public hearing.

Zen Wojcik: There have been some major changes to the SWPPP. We could bump this thing a long for a couple of meetings. We were asking them to tweak the design. There are 9 other SWPPP comments. I am always hesitant for the Board to schedule a public hearing when there is a lot of stuff that needs to be done on drainage.

Mr. Astorino: I understand that. The applicant has pointed out that he has no issues with changing the SWPPP. Do you feel that with the changes there would be more comments?

Zen Wojcik: I don't know. If you want to set a public hearing, that would be ok. Kirk knows my phone number. I have his phone number. We will be able to work this thing out in time.

Mr. Astorino: We are not setting it with a date. We would be setting it for the next available agenda. That would be up to the Board. Does the Board want to set this application for a public hearing?

**Mr. Singer makes a motion to set the Warwick Isle application for a Final Public Hearing at the next available agenda.**

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

Kirk Rother: Thank you.

***Lands of Ray and Myrna Carlisle***

Application for “Amended” Site Plan Approval and Special Use Permit for the construction and use of a Dog Training Facility, situated on tax parcel S 63 B 1 L 8.21 and L 8.22; project located on the western side of County Route 21 1500 feet north of Bowen Road (114 Warwick Turnpike), in the MT zone, of the Town of Warwick. Site Plan Approval & Special Use Permit was granted on, 2/4/09.

Representing the applicant: Kirk Rother, Engineer. Mr. Alan Lipman, Attorney. Ray Carlisle, applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
  - A. A change is proposed to the approved conditions of approval. Provide an updated Environmental Assessment Form
  - B. Provide supplemental screening/landscaping to the Town Planner’s specifications.
  - C. At the Hours of Operation note, add “on weekends”.
2. Applicant to discuss project.
3. Board and applicant to discuss compliance with §164-46J(2) and applicability of the amended ZBA determination.
4. A caretaker’s residence is proposed on the site. The amended application does not specify a request for a special use permit for a use where a caretaker’s residence is an approvable accessory use. Applicant to discuss.
5. The titles for the various fence types, shown on sheets 1 & 2 and the plan view on sheet 3, do not correlate with the titles of details shown on sheet 3.

**BEFORE FINAL APPROVAL:**

6. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes.
7. Applicant to provide 9-1-1 addressing.
8. Pay a 3-year term landscape bond and inspection fee for screening plantings.
9. Pay outstanding review fees.

The following comment submitted by the Conservation Board:

Lands of Ray and Myrna Carlisle – None submitted.

The following comment submitted by the ARB:

Lands of Ray and Myrna Carlisle – None submitted.

Comment #1: Board to discuss SEQR.

- A. A change is proposed to the approved conditions of approval. Provide an updated Environmental Assessment Form
- B. Provide supplemental screening/landscaping to the Town Planner’s specifications.
- C. At the Hours of Operation note, add “on weekends”.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: "The Planning Board acted as Lead agency on the review of the original Site Plan/Special Use Permit applications, resulting in the issuance of a Negative Declaration. Changes have now been proposed for the project. Before the Planning Board can address whether the changes proposed could result in a potential significant environmental effect, the applicant needs to provide the Planning Board with a new Environmental Assessment Form."

Kirk Rother: We are ok with A, B, and C.

Comment #2: Applicant to discuss project.

Mr. Lipman: Since this was approved months ago, it has become necessary to separate the project from the Carras parcel. The buyer of the house was unable to secure financing. He also had some health problems. There will not be a partner in the training facility operation. What we had done was move the location of the kennel to within a small window, which was removed from everyone around us by at least 300 feet. You will see it towards the rear towards the south. In the back, there is a turnaround area. Do you see that? It would be a little bit left to the pond.

Mr. Astorino: We got it.

Mr. Lipman: That structure is not at the moment planned as a permanent type of a structure. It could be enlarged to accommodate more animals if it was necessary in its current design. We have the room for it there. The facilities that are in the existing structure, which is right at the edge of the existing parking - that is where the apartment is upstairs -, those facilities would not be used by any guest animals. It would be used if at all by Mr. Carlisle for his own animals. He is authorized by ordinance to have not more than 3 adult dogs. That is all that it would be used for. I don't believe that there are any other changes proposed. Except, we now show we would like to have a caretaker's apartment where that apartment now exists. That is allowed as an accessory use to any permitted or specially permitted use in this zone.

Mr. Bollenbach: I would have to verify that.

Mr. Lipman: I already had done that. That was all that we have changed by moving the structure that would be the kennel for the dogs to be trained in the rear of the property. We no longer need the variance that we secured already for the neighbor that is across the road. We now conform to your requirements, your regulations.

Mr. McConnell: The building that is being used for the dog runs in that kennel. How many runs are in that building?

Ray Carlisle: There are 12 runs.

Mr. McConnell: Are you proposing to dismantle 9 of them?

Ray Carlisle: No.

Mr. McConnell: You would like us to let you keep 12 runs, but you are going to promise us to use only 3 of them.

Ray Carlisle: I have 3 dogs. The 12 runs would accommodate the 2 litters which would allow for the separation of puppies. I could keep those up to 6 months. That would be what I would use those runs for.

Mr. McConnell: I wouldn't use 9 runs. I am a little concerned about that. The second question I have on this is that the existing dog training field that was attached to that building, I noted in a previous set of plans, you measured the 300 feet from the dog-training field, which is appropriate under the Code. I don't see in this plan shown the 300 feet from the training field.

Mr. Lipman: The training field, not the facility contiguous to the existing structure where the 12 runs are. There is a corral there. That is not what you are talking about.

Mr. McConnell: I am looking at something that says existing dog training field.

Mr. Lipman: Yes.

Mr. McConnell: That should be 300 feet from a property line.

Mr. Lipman: I didn't think so.

Mr. McConnell: It says in Special Condition #2, "No dog kennel, runway, or exercise pen should be located within 300 feet of any lot line."

Mr. Lipman: It is not a pen. It is not a runway.

Mr. McConnell: Is it not an exercise pen?

Ray Carlisle: No. It is an open area.

Mr. McConnell: Is it enclosed?

Mr. Lipman: No. I thought the only separation that we established on the plan was from the kennel itself.

Kirk Rother: I did show the 300-foot on the last plan.

Mr. Astorino: Zen, that would be something we would have to verify.

Comment #3: Board and applicant to discuss compliance with §164-46J(2) and applicability of the amended ZBA determination.

Zen Wojcik: Mr. McConnell just read §164.

Mr. Lipman: Is that the section that you are referring to?

Mr. Astorino: Yes.

Mr. Lipman: We covered that.

Comment #4: A caretaker's residence is proposed on the site. The amended application does not specify a request for a special use permit for a use where a caretaker's residence is an approvable accessory use. Applicant to discuss.

Mr. Lipman: I don't understand the comment. The ordinance is quite clear. The Table of Uses is broken up into specially permitted accessory uses. They run through Agricultural, Residential, Business, General, and then Accessory Uses. If you look at A-1, which is the first accessory use? It states; one dwelling on any lot would the use of an attendant, watchman, or caretaker, employed in connection with any permitted or special permit use on said lot, subject to conditions 14, 73, and 88. None of it applies to this particular use.

Mr. McConnell: Would this be for someone that is employed by Mr. Carlisle?

Mr. Lipman: Yes.

Mr. Astorino: That would be in approving employment documentation.

Mr. Lipman: Absolutely.

Mr. Astorino: We would have to change the application.

Mr. Bollenbach: Let me take a look at that.

Mr. Astorino: It is not on the application for a caretaker unit.

Mr. Bollenbach: It would be for 1 dwelling unit. This is in the MT zone. These are not special conditions, 14, 73, and 88. These are use numbers, 14, 73, and 88. A dog training facility is what use number? That would have to be verified. That was what the concern was. Number 14 is for an agricultural operation. Number 73 is for other uses. It is not related to the dog training.

Mr. Lipman: How do you determine which use we are talking about? Are these the only uses allowed?

Mr. Bollenbach: Number 14 says specifically accessory to agricultural operations. Different zones have accessory to different particular uses. In the OI zone, you have 1/2-dozen of them. In the DS zone, you only have one. It is specifically related to the zone and what uses are proposed.

Mr. Lipman: I think you are correct. We thought it was referenced to the special conditions.

Mr. Astorino: Get in touch with Mr. Bollenbach on that matter. I am sure you will iron it out. John, will you clarify comment #4?

Mr. Bollenbach: Yes.

Comment #5: The titles for the various fence types, shown on sheets 1 & 2 and the plan view on sheet 3, do not correlate with the titles of details shown on sheet 3.

Kirk Rother: We will correct.

**BEFORE FINAL APPROVAL:**

Comment #6: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes.

Kirk Rother: Ok.

Comment #7: Applicant to provide 9-1-1 addressing.

Kirk Rother: Ok.

Comment #8: Pay a 3-year term landscape bond and inspection fee for screening plantings.

Kirk Rother: Ok.

Comment #9: Pay outstanding review fees.

Kirk Rother: Ok.

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

Mr. Lipman: I have a question. Procedurally, I believe that this is not a substantial change. It is a particular use. I respectfully suggest all that would be needed would be an amendment determination. Because, your decision as it was adopted, it included references to the variance and the Carras property. Keep in mind that we were going to have one guy owning that and another guy owning the rest of it. There was a need to provide leases and all this other stuff. That stuff that was to be provided is no longer relevant. I would like to clean that up so that it deals with only what would need to be covered in this operation. It is a much simpler result particularly with respect to the documents that you required.

Mr. Bollenbach: I think Ted wanted to put a hold on that pending receipt of an EAF.

Mr. Astorino: Yes.

Mr. Bollenbach: He needs to review it to determine if whether or not it was significant or not. The thing that initiated the original application was the illegal conversion and erection of that apartment building, the conversion of that garage or whatever structure it was. The current proposal would still have some type of a caretaker's dwelling. I believe that is not permitted in the Code. In the last application, that was supposed to be removed. The caretaker was supposed to be living in the Carras dwelling.

Mr. Lipman: All of that is true. The apartment is empty. If you are right, and I think you might be, I will revisit the issue of the caretaker.

Mr. Bollenbach: Maybe an amendment application could be warranted. We don't know at this time.

Mr. Astorino: Does the Board have anything further? We received a letter from Steven Carras, dated 7/13/09 that was addressed to Michael Sweeton, Supervisor. We have that in our packets. You will need to do some research. You will be back.

Mr. Lipman: Thank you.

Kirk Rother: Thank you.

***Meadowcrest, LLC. / Steve Sullivan #2***

Application for “***Amended***” Site Plan Approval and Special Use Permit for the use of a restaurant, bakery or deli to replace a 1,000 square foot of retail space located in the Meadowcrest/Steve Sullivan building, situated on tax parcel S 51 B 1 L 4.1; project located on the southern side of NYS Route 94 2,125± feet east of Warwick Turnpike, in the DS zone, of the Town of Warwick.

Representing the applicant: Karen Emmerich from Lehman & Getz Engineering. Steve Sullivan, Applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.
3. The applicant seeks to remove a restriction against “eating and drinking establishments,” etc.
  - a. The calculation justifying the hydraulic impact of the proposed use is based on information provided by the applicant of “historic” use. This number is then compared with a design capacity for the septic system based on regulatory hydraulic loading rates. Recalculate the potential hydraulic loading based upon the regulatory rates for comparison with the septic design.
  - b. Applicant to discuss how the location of the well complies with §159-Wellhead Protection.
  - c. Applicant requires the approval of the ZBA to change the restriction. Board and applicant to discuss referral.
4. The “Parking Calculations” and the site plan show more actual parking spaces than were approved. Applicant to discuss.

The following comment submitted by the Conservation Board:

Meadowcrest, LLC. / Steve Sullivan #2 – None submitted.

The following comment submitted by the ARB:

Meadowcrest, LLC. / Steve Sullivan #2 – None submitted.

Comment #1: Board to discuss SEQR.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: “The Planning Board acted as Lead agency on the review of the original Site Plan/Special Use Permit applications, resulting in the issuance of a Negative Declaration. In this Amended application, the applicant has requested use changes to the site, potentially affecting water use, well head protection, traffic onto Route 94 and parking. The Planning Board has been provided with a new Environmental Assessment Form to

address the proposed changes. A letter has been sent to the New York State Department of Transportation's SEQR Unit in an attempt to determine whether the DOT has any traffic concerns with the proposed use changes. If the changes proposed are determined by the Planning Board to cause a significant environmental effect, then the Planning Board could amend the Negative Declaration or rescind it and then issue a Positive Declaration. We should await the submission of further information from the applicant regarding these issues. If no significant impacts are determined to result from the changes, then the Board can simply let the record show that it has determined there will be no significant effects from the proposed changes, provided the Zoning Board of Appeals issues revised variances."

Comment #2: Applicant to discuss project.

Karen Emmerich: I think you are all familiar with this project. We received approval for this project back in the year 2004. It is a 12,000 square foot office/retail building. It is a 2-story building. The bottom story contains retail uses, a clothing shop, a retail shop, a tanning place, another retail space, and 1000 square feet that was a former bakery. The 2<sup>nd</sup> floor contains a variety of uses. Each of them are kind of stand alone. The 1<sup>st</sup> floor and 2<sup>nd</sup> floor each have their own septic system. They do share a well. The parking is divided almost equally between the upper floor and the lower floor. What we are proposing on the lower floor in the area of where the 1,000 square foot bakery existed, we would like to have the option of having seating within the café/deli. It would not be a full service restaurant. It would be an eatery that would allow some tables and seats for patrons. That was an issue with the bakery.

Mr. Astorino: You are looking to have a kitchen.

Karen Emmerich: Yes. It would be a modified kitchen. There would be a sink.

Mr. Astorino: Would you have an oven?

Karen Emmerich: Yes. Well, maybe not an oven.

Mr. Showalter: It would be something like a café or coffee shop.

Karen Emmerich: Right.

Mr. Astorino: It would not be a full-blown cooking facility.

Karen Emmerich: No.

Mr. McConnell: Do you have a listing of the equipment that you would propose?

Mr. Bollenbach: I don't know what the difference is. Why not have an eating/drinking establishment limit to 1,000 square feet. Does it impact on your septic?

Karen Emmerich: We cannot meet the criteria for a flow-blown restaurant in addition to the other uses there.

Mr. Astorino: Would you have limitations on water usage in the kitchen?

Karen Emmerich: What we have done, Steve has put in a water meter on the lower level. We have actual data on the water usage for that portion of the building. What we are proposing, we believe could operate properly within the limitation of the septic system assuming what goes in comes out. We would like to have the option of putting in an eating facility in that 1000 square feet. It would just be for that portion of the building. The remainder of that floor will remain as retail.

Mr. Astorino: How close are you if you per open this facility? Do you just shut the water off when you get to that threshold?

Mr. Bollenbach: What is the excess capacity?

Karen Emmerich: We ran calculations. That is what I don't have in front of me. We had done 2 sets of calculations. We ran the proposed water usage based on actual data. Then, Zen asked for calculations based on the NYSDEC Bluebook requirements, which are generally used for what exists and what would be proposed on that bottom floor. There is a discrepancy. There are a couple different ways you could calculate based on the DEC guidelines. You could base it on square footage or base it on employees. The added problem that we have is what we are proposing and what actually exists out there, it does not meet any of the DEC's definitions. Often times when you are doing a design, you have to go by the general categories they have in this book as best as you can. For instance, regarding the nail salon, there is nothing in here for a guideline regarding water usage for a nail salon.

Mr. Astorino: But, that would be minimal at best for a nail salon.

Karen Emmerich: Exactly. We ran these calculations on the best category that we could find which would be a hair salon. A hair salon would have much higher water use than a nail salon. The nail salon doesn't fit in any other category. That is the problem we are having as far as comparing calculations based on this blue book versus actual data that we have on the nail salon, tanning salon, and the retail use that is out there and our projection of what would be used in that 1,000 square-foot café. That is where the problem lies. There is a discrepancy between the square-footage calculations based on the maximum quantities based on this book. It could be anywhere from 904 gpd for the proposed usage of that first floor. Or, if you based it on employees, it could be 624 gpd, whereas the septic system is designed for 480 gpd. There is quite a broad spectrum there. That was why we provided the actual data which gives us a realistic idea of what is actually going on.

Mr. Bollenbach: What is the actual water use?

Zen Wojcik: The proposed water use was based on meter readings. It was calculated as 384 gpd for what they are proposing. That was based on 5,000 square feet in use somewhat of what it is right now and 1,000 square feet in deli use

Mr. Bollenbach: You are missing my point. What is the actual use minus the 1,000 square feet? What would be permissible for the eatery portion?

Zen Wojcik: The actual use minus the 1,000 square feet would be 214.3 gpd average.

Karen Emmerich: It would be roughly half of what the designed septic system is.

Mr. Astorino: You would have a couple hundred gallons to spare.

Comment #3: The applicant seeks to remove a restriction against “eating and drinking establishments,” etc.

- a. The calculation justifying the hydraulic impact of the proposed use is based on information provided by the applicant of “historic” use. This number is then compared with a design capacity for the septic system based on regulatory hydraulic loading rates. Recalculate the potential hydraulic loading based upon the regulatory rates for comparison with the septic design.

Zen Wojcik: When this application came before the Planning Board in the year 2004, the applicant calculated the size of the septic system based upon the parameters prepared by the DEC. With that said, they came up with two separate systems at 480 gpd each maximum capacity. You have 6,000 square feet for each septic system that would be used in a particular use. The DEC said if you use this number that would be how you could calculate it. There will be uses that would use less water. There would be uses that use more water. That number came about to be used all over NYS as an average of what we could expect to see for these particular uses. This building has been successfully used since it was constructed. Mr. Sullivan has taken water meter readings, which is great. We found that the actual use was less than what the State said could happen. The actual use is based upon the people that are there right now. I don't think he is giving perpetual leases for these places. Next year, there could be completely different uses in this 5,000 square feet. There is nothing that would say that they would have the same water usage. It may be more or less. I don't know. We need to have something to compare with. We are talking about an eating/drinking establishment. In their original calculations, it was based upon 116 gpd from a historically use data for a 1,500 square-foot store. I don't know what store they are using. We had a similar argument that we made with the supermarket. That was fine. We could all come up with numbers that suit our needs if we want to. 116 gpd from a historical use data for a 1,500 square-foot store. Maybe if we knew what the store was and what kind of use they had, it would have some relevance to this argument. But, we don't have that. The State has a number that it uses. As Mrs. Emmerich had explained, there are two ways of calculating it. It would either be based upon the seating, which for 18 seats maximum comes out to 540 gpd. That was what the State said it would be. If we want to use that State figure and kick it in with a number that they have for historical use of the building, that would put us over 700 gpd. We have a lot of different numbers here. It would be up to the Board to determine which category they would like to go by. Would you like to continue with the way that this plan was originally approved based upon the data as provided by the DEC as a calculation for the potential uses no matter what they would be for the type of building? It would be up to the Board on what they would want to do. There is no guarantee along the way that a year from now that the Building Inspector would be asking from me, if these uses changes, would it be a dramatic enough use that they would have to go before the Planning Board for approval. I am not all together sure about that.

Karen Emmerich: I think we are comfortable with that.

Zen Wojcik: It would be if the Planning Board was comfortable with that.

Karen Emmerich: That is what we are here to find out. Basically, if there is a use that is proposed for that building, the Building Inspector always has the opportunity to put that application before the Planning Board. If we wanted to put in two hair salons there versus retail space, it could be very likely the Building Inspector would say that we would need to go before the Planning Board because he would not want to make a decision on whether if the septic was capable of handling it, or if the water supply was sufficient, or if we had enough parking, etc...

Steve Sullivan: It is unlikely that it would be another use that uses a lot of water. It would have to be a competing use within the building. We have written into our leases that there can't be more than one nail salon or more than one hair salons.

Mr. Bollenbach: How many hair salons do you have now?

Steve Sullivan: We just have one hair salon. That is all what we would ever have.

Mr. McConnell: What about a dog grooming shop?

Steve Sullivan: I have been approached by dog grooming shops. That prospective tenant would be a high use. I actually turned it away. It wasn't a use that I wanted.

Mr. McConnell: But, it wouldn't be a competing use.

Steve Sullivan: True. It wouldn't be.

Mr. McConnell: It would be a high use.

Steve Sullivan: It would be.

Mr. McConnell: Ok. That would be one example.

Steve Sullivan: That would be a good example.

Mr. Astorino: No matter what, if that went this way, it would have to come back before the Planning Board. I couldn't see how else you could monitor that.

Mr. McConnell: You would have to accept that you would review every single one.

Mr. Astorino: You would have to.

Karen Emmerich: Unless, it was a retail use for example, a jewelry shop that wants to come in.

Mr. McConnell: How about a pet store that wants to sell fish?

Karen Emmerich: If that was the case, then they would have to go before the Planning Board. I don't think you could say that every use would necessarily come before the Board. But, the Building Inspector at the time of the building permit or C of O process could say, a fish store or dog groomer could put you over the usage.

Mr. McConnell: One of the reasons for regulations like that is to give people the ability for predictability so that they have some way to guide their behavior and not be subject to arbitrary sort of stuff. I think in this situation where we are going to be pushing the limits...

Mr. Astorino: But, no matter what, it would have to go to the Building Department.

Mr. McConnell: Right.

Mr. Astorino: The Building Department would have to make the call at that time by whatever information that they would be requesting from the applicant.

Mr. McConnell: If it is anything close, they would kick it to the Planning Board.

Karen Emmerich: Let us consider this. When this project was designed, it was designed as office/retail space. The calculations were based on retail space according to the blue book and office space for septic systems. We now have uses in there that may be are not as clearly defined as retail or office. There is a karate place upstairs. There is a nail salon that is not retail. It falls in a gray area. The same thing would be with the tanning salon. It is not really retail or a high water use. What category do you put that in? Not everything is clear-cut. Right from the beginning, it has not been clear-cut. It has been up to the Building Inspector to decide as he decided with the Bakery. He said, if you are bringing in food, selling it, and it is going out the door, then he would allow food use in the building, but you cannot have seating. That is what we want.

Steve Sullivan: Had that Bakery had seating, it would not have used much more water than what they did. Their establishment would not have changed. They would have done exactly what they did, but they would have had a few more seats where people could sit. That was what we were prevented from doing. That was our goal regarding able to have seating.

Mr. Astorino: That was when you had to go to the ZBA.

Karen Emmerich: Right.

Mr. Astorino: You will have to go to the ZBA again.

Karen Emmerich: Right. We realize that.

Mr. McConnell: If you give seating, do you have to give access to restrooms?

Karen Emmerich: If you had 19 or more seats, you would have to have a public bathroom. That was why we limited to 18 seats.

- b. Applicant to discuss how the location of the well complies with §159-Wellhead Protection.

Karen Emmerich: I went through and looked at the Town's requirements for wellhead protection. I don't have that list with me.

Mr. Astorino: You will have to supply us with it.

Karen Emmerich: Yes.

- c. Applicant requires the approval of the ZBA to change the restriction. Board and applicant to discuss referral.

Karen Emmerich: Ok.

Mr. Astorino: That would be something the Board would have to make a determination on. We will discuss that at a Work Session.

Comment #4: The "Parking Calculations" and the site plan show more actual parking spaces than were approved. Applicant to discuss.

Karen Emmerich: Ok.

Mr. McConnell: You are also proposing fewer parking spaces than what is required.

Karen Emmerich: That is true.

Steve Sullivan: We had shuffled some parking spots around. At the end of construction, we came across a large rock right next to the building. We couldn't put a couple of spots there. We moved them across the lot. When we did that, we had several parking spaces. There are more spaces out there, then what were originally shown on the site plan.

Mr. McConnell: It sounds like you are in violation of the approval.

Karen Emmerich: We received a C of O.

Mr. McConnell: That is on the record.

Mr. Astorino: I believe so. We will discuss a referral to the ZBA at the Work Session. You will get us the other information. Get us some information on what you will be putting in the kitchen. Get us something concrete that you will be using. Give us a heads up on that.

Mr. Bollenbach: You might want to continue monitoring the water usage. Give us some assurances not just for the Planning Board but also for the Building Department.

Mr. Astorino: If this falls through this way, it would fall through the Building Department.

Mr. Bollenbach: It would be every 6 months for you to provide the information. I don't know how often you would read them. Maybe, you could provide quarterly information to show that you are in compliance. We just want to have an easy way to monitor. Give us those assurances.

Mr. Singer: Mr. Sullivan, you metered the water on the first level. Do you have an idea of what the water use was for upstairs?

Steve Sullivan: I metered the downstairs for the bakery. That was for the purposes of the OCHD when they were trying to meet the requirements. That was an issue they came up with was how much water would be used. I just metered the downstairs. It was broken up into two separate systems. It was easy enough to put a water meter on the lower level.

Mr. Singer: Is there a way to find out how much water is being used upstairs?

Karen Emmerich: He would have to install a meter up there. That is a different septic system.

Mr. Singer: But, you could pump from the new restaurant up to that septic if you did not have enough space in the septic down below.

Karen Emmerich: I don't think so.

Zen Wojcik: Could we also have an idea of what this 1,000 square-foot restaurant with its usage that they would like to take credit for of what that is?

Karen Emmerich: Ok.

Mr. Bollenbach: Maybe, you could also give us some examples of prospective tenants.

Karen Emmerich: Sure.

Mr. Astorino: Please get us that information.

Mr. Singer: If you are to have 18 seats in this restaurant, would that require more parking spaces than what the Bakery did? 18 people are a lot of people.

Karen Emmerich: We will calculate that and get that to you.

Carl Singer: Ok.

Karen Emmerich: Thank you.

**Other Considerations:****1. Warwick Views Subdivision** – Planning Board in receipt of “Revised” DEIS for review.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 7/10/09 as follows: “While not an agenda item, the applicant has submitted a revised Draft Environmental Impact Statement. Thirty days from the date of the Planning Board’s July 15<sup>th</sup> meeting is considered the time needed to complete a review of the proposed changes to determine whether the DEIS now conforms with the Final Scoping Document adopted by the Planning Board for the action. We will plan on having our completeness review comments ready for Planning Board review by the middle of August.”

Mr. Astorino: We have that in our possession. We will review it.

**2. Millers Ridge Subdivision** – Letter from Kirk Rother, Engineer, dated 6/10/09, received on 6/16/09 addressed to the Planning Board in regards to the Millers Ridge Subdivision – requesting a 3<sup>rd</sup> 6-Month Extension on Preliminary Approval of a proposed 16-Lot Cluster + 1-Affordable Residential Lot + 1-Commercial lot Subdivision, situated on tax parcels SBL # 51-1-7.41 & 41; parcels located on the eastern side of Warwick Turnpike 1500 feet south of NYS Route 94, in the RU zone. Preliminary Approval was granted on 12/5/07. *The applicant is still in the process of obtaining approval from the OCHD.* The 2<sup>nd</sup> 6-Month Extension was granted on 12/3/08 became effective on, 12/5/08. The 3<sup>rd</sup> 6-Month Extension becomes effective on, 6/5/09.

Mr. Kowal makes a motion on the Millers Ridge Subdivision, granting a 3<sup>rd</sup> 6-Month Extension on Preliminary Approval of a proposed 16-Lot Cluster + 1-Affordable Residential Lot + 1-Commercial Lot subdivision, SBL # 51-1-7.41 and 41. Preliminary Approval was granted on, 12/5/07. The 3<sup>rd</sup> 6-Month Extension becomes effective on, 6/5/09.

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

**3. Warwick Isle Corp.** – Letter from Kirk Rother, Engineer, dated 6/16/09 addressed to the Planning Board in regards to Warwick Isle Subdivision – requesting a 6<sup>th</sup> 6-Month extension on Preliminary Approval of a proposed 30-Lot + 3-Affordable Homes Subdivision, situated on tax parcel S 3 B 1 L 6.21; parcel located on the northern side of Merritts Island Road at the intersection with C.R. #1, in the SL zone. Preliminary Approval was granted on, 6/21/06. *The applicant recently received OCHD approval. The applicant’s engineer intends to apply to the Planning Board for final approval by the next submittal date.* The 6<sup>th</sup> 6-Month Extension becomes effective on, 6/21/09.

Mr. McConnell makes a motion on the Warwick Isle, Corp., Subdivision, granting a 6<sup>th</sup> 6-Month Extension on Preliminary Approval of a proposed 30-Lot + 3-Affordable Homes Subdivision, SBL # 3-1-6.21. Preliminary Approval was granted on, 6/21/06. The 6<sup>th</sup> 6-Month Extension becomes effective on, 6/21/09.

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

4. **Cedar Ridge Subdivision** - Letter from Kirk Rother, dated 6/22/09 addressed to the Planning Board in regards to the Cedar Ridge Subdivision – requesting “***Re-Approval***” of Final Approval of a proposed 36-Lot cluster subdivision, situated on tax parcel S 7 B 2 L 51.2; parcel located on south side of Wheeler Road approximately 1500 feet west of intersection with County Route 41, in the RU zone. Final Approval was granted on, 7/16/08. 6-Month Extension was granted on, 1/21/09 became effective on, 1/16/09. *The applicant is still in the process of satisfying the conditions of final approval.* “Re-Approval” of Final Approval becomes effective on, 7/16/09 subject to the conditions of Final Approval granted on, 7/16/08.

Mr. McConnell: Mr. Rother what are the conditions that you are in the process of satisfying?

Kirk Rother: All of these Re-Approvals are primarily financial reasons. For example here, we have to come up with a million dollar road bond.

Mr. McConnell: Could I suggest that you say that?

Kirk Rother: Sure.

Mr. McConnell: These sort of nebulous reasons don't help us any. If we know what they are, then we don't have to guess.

Kirk Rother: Ok.

Mr. McConnell makes a motion on the Cedar Ridge Subdivision, granting “***Re-Approval***” of Final Approval of a proposed 36-Lot cluster subdivision, entitled, “**Cedar Ridge**”, situated on tax parcel S 7 B 2 L 51.2; parcel located along the south side of Wheeler Road approximately 1500 feet west of intersection with County Route 41, in the RU zone, of the Town of Warwick, county of Orange, State of New York, subject to the conditions of Final Approval granted on, 7/16/08. The “Re-Approval” of Final Approval becomes effective on, 7/16/09.

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

5. **Adele Grill Subdivision** – Letter from Adele Grill, dated 4/30/09 addressed to the Planning Board – in regards to Grill Subdivision requesting **2nd Re-Approval** of Final Approval of a proposed 4-Lot cluster subdivision, situated on tax parcels S 29 B 1 L 71 & L 72; parcels located on the westerly side of Distillery Road 750 feet north of Pine Island Turnpike, in the RU zone. Final Approval was granted on, 5/16/07. 1<sup>st</sup> Re-Approval of Final Approval was granted on, 5/7/08. 6-Month Extension on Re-Approval of Final Approval was granted on, 11/5/08 became effective on 11/7/08. *The applicant is currently experiencing economy problems and the depressed housing market.* The **2nd Re-Approval** of Final Approval becomes effective on 5/7/09, subject to the conditions of Final Approval granted on, 5/16/07.

Mr. McConnell: Did we clear up all of the questions about the other building on the property?

Mr. Astorino: Yes. It has all been done. I have sat down with Zen and John, and Mrs. Grill. John had a very good idea with an affidavit stating that there was no residential use.

Mr. Bollenbach: It has been abandoned.

Mr. Astorino: She was going to take care of the kitchen.

Mr. Bollenbach: Mr. John Batz went out to the property. He said the house has been abandoned to his satisfaction. In the event that any type of use does resume, we could take it directly to court.

Mr. McConnell: Ok.

Mr. McConnell makes a motion on the Adele Grill Subdivision, granting **2<sup>nd</sup> Re-Approval** of Final Approval of a proposed 4-Lot cluster subdivision, situated on tax parcels S 29 B 1 L 71 and L 72; parcels located on the westerly side of Distillery Road 750 feet north of Pine Island Turnpike, in the RU zone, of the Town of Warwick, County of Orange, State of New York, subject to the conditions of Final Approval as amended, granted on, 7/15/09 as follows:

1. **Provide a map note stating that the residential use of the accessory building has been abandoned.**
2. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes, Agricultural Protection Notes and Open Space Conservation Notes.
3. Applicant to provide 9-1-1 addressing.
4. 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, to the Town Engineer's specification.
5. Pay Parkland Fees.
6. Pay Outstanding Review Fees.

The 2<sup>nd</sup> Re-Approval of Final Approval becomes effective on, 5/7/09.

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

7. **Lands of Kirk Rother** – Letter from Kirk Rother Engineering, dated 6/23/09 received on 7/8/09 addressed to the Planning Board – in regards to Lands of Kirk Rother requesting “**Re-Approval**” of Final Approval of a proposed 2-Lot cluster subdivision, situated on tax parcel S 42 B 1 L 110.4; parcel located on the western side of County Route 1, 1885 feet north of Waterbury Road, in the RU zone. Final Approval was granted on 7/16/08. 6-Month Extension was granted on 1/21/09 became effective on 1/16/09. “**Re-Approval**” of Final Approval becomes effective on 7/16/09, subject to the conditions of final approval granted on, 7/16/08.

Mr. McConnell makes a motion on the Lands of Kirk Rother application, granting “**Re-Approval**” of Final Approval of a proposed 2-Lot cluster subdivision, situated on tax parcel S 42 B 1 L 110.4; parcel located on the western side of County Route 1, 1885 feet north of Waterbury Road, in the RU zone, of the Town of Warwick, County of Orange State of New York, subject to the conditions of Final Approval granted on, 7/16/08. The “**Re-Approval**” of Final Approval becomes effective on, 7/16/09.

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

8. **Planning Board Minutes of 6/17/09** – Planning Board Minutes of June 17, 2009 for Planning Board Approval.

Mr. Showalter makes a motion to Approve the Planning Board Minutes of June 17, 2009.

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

### **Correspondences:**

1. Memo from Supervisor Sweeton, dated 6/26/09 in regards to Planning Board in receipt of Zoning Petition for the Lands of Pankin for recommendation to the Town Board.

Mr. Astorino: I wasn't at the Work Session for that. Did the Board come to a consensus that evening?

Mr. Bollenbach: Take a look at it.

Connie Sardo: It is in your packets.

Mr. Bollenbach: It does have a particular Code Section in there. Take a look at it. Put your thoughts together. Ted will be getting us some information. We will have to work on it at a Work Session so we could provide a formal recommendation to the Town Board based upon the criteria that is set forth in the Code.

Mr. Astorino: We will put it on the next Work Session.

**Privilege Of The Floor For Agenda Items!!**

Mr. Astorino: If there is anyone in the audience wishing to address any of the agenda items, please rise and state your name for the record. Let the record show no public comment.

**Mr. Showalter makes a motion to adjourn the July 15, 2009 Planning Board meeting.**

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