

TOWN OF WARWICK PLANNING BOARD

August 19, 2009

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

The regular meeting of the Town of Warwick Planning Board was held Wednesday, August 19, 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 Normajean 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 July 15, 2009 Planning Board meeting.

Representing the applicant: Dave Higgins from Lanc & Tully Engineering. Ira Emmanuel, Attorney. Tom Cusack, LBG.

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. FOR THE RECORD – Applicant has contacted NRCS and determined that soils in the proposed open space are suitable for continued Ag use.

5. Applicant proposes a Town Road. Board has reported that the Town Board does not prefer accepting cul-de-sacs. Applicant to discuss.
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.

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

8. \* No Further Comments.

**WELL TESTING & MONITORING**

9. Refer to the attached Tectonic memo, dated August 17, 2009.

**BEFORE FINAL APPROVAL:**

10. \* 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.
11. Provide the recording information on the plan for a map note for preservation of existing drainage channels through subdivided lots.
12. Provide the recording information on the plan for the 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 proposed 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 (stormwater management facilities and erosion control measures).
18. \* Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 8/19/09:

Normajeau Fusco - The CB's comments on the April 1, 2009 Agenda are repeated here for convenience:

*There does not appear to be any trees shown on the plan. There appears to be driveways going over wetlands and some septic system appear too close to wetlands. Finally, it is not clear where the bio-retention area is located.*

The CB understands that a number of these issues have been addressed by the applicant.

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. Fink: Under SEQR, we have been using the full EAF to review this project. That had included some extended studies that were prepared regarding the potential water supply on the property. There are also fairly extensive wetlands on the property. It is located within a bio-diversity conservation area. There is also cluster consistency. There were a number of questions that the Orange County Planning Department had raised regarding the overall plan. We had asked the applicant to provide us with narrative studies that addressed a number of different SEQR issues. We do have those in the record. I had discovered most recently that we needed to have some modifications made to Part 1 of the EAF. I understand that the applicant’s engineer has brought with him tonight an amended Part 1 EAF as well as a Part 2 EAF. We will take that from the applicant’s engineer for the record. I believe at this point, all the issues that have been raised so far under SEQR have been addressed. The applicant has provided us with several letters that explains some of the thinking that went into the consistency of the plan with a variety of different issues especially with the wetlands, habitat areas, as well as the Ridgeline Overlay in which this property is located. I think that covers it.

Mr. Astorino: Ok. There are still some SEQR issues that yet have to be reviewed.

Mr. Fink: Yes. We will have to take a look at the revised Part 1 and Part 2 EAF document. We need to make sure everything is in order. Other than that, we are at the point here where the Board can’t consider SEQR until we have a chance to look at this latest document that we just received tonight.

Mr. Astorino: Ok. Regarding the rest of these comments, we addressed them the last time. Zen, are the rest of these comments just on to keep in place?

Zen Wojcik: Yes.

Comment #2: \* Applicant to discuss project.

#### **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: FOR THE RECORD – Applicant has contacted NRCS and determined that soils in the proposed open space are suitable for continued Ag use.

Comment #5: Applicant proposes a Town Road. Board has reported that the Town Board does not prefer accepting cul-de-sacs. Applicant to discuss.

Mr. Astorino: That would be something that you would have to go to the Town Board on.

Dave Higgins: Right.

Mr. Astorino: You mentioned that the last time around.

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.

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

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

Comment #8: \* No Further Comments.

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

Comment #9: Refer to the attached Tectonic memo, dated August 17, 2009.

Mr. Astorino: Zen, do you want to explain that?

Zen Wojcik: We have a memo from James Upright, P.E. of Tectonic addressed to Ed Butler, dated 8/17/09. 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 Revised Well Testing  
Report for the Proposed Fusco  
Subdivision

**DATE:** August 17, 2009

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As requested, we have reviewed the responses to Tectonic's July 8, 2009 comments on 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. The comments and responses were directed at the data for the existing Fusco Well #1 which indicated a large drawdown event near the same time as the primary pump testing event on Lot #3. Our comments requested that the applicant provide additional information on this well, how it

impacts the neighboring wells, and what conclusions can be drawn for the closely spaced wells in the proposed subdivision.

In response, LBG described how they had performed a pump test on the existing well at a rate of 5 gpm to meet the Orange County Department of Health (OCDOH) requirements. The well drawdown was pumped at 5 gpm, had a stabilized drawdown of 60 feet for 7.5 hours and recovered to pre-test levels approximately 16.5 hours after the completion of the test. Well #1 was reported as having a depth of approximately 600 feet with 101 feet of casing.

LBG concurs with our opinion that the two wells at 23 Taylor Road were impacted by the pump test on Fusco Well #1. Due to obstructions in the casing from well pipe centralizers, the data loggers could not be installed to great depths and so water levels during Well #1 pump test dipped below measureable levels. However LBG estimates that the impact to both wells was 30 feet of drawdown, which is approximately one-half of the drawdown in the pumping well. The depths of the two wells were not known by the owners of 23 Taylor Road nor could they be determined due to the obstructions in the well casing. LBG's report concludes:

- a. that the bedrock aquifer has the potential to yield 5 gpm throughout the property based on the two pump tests,
- b. that the recharge to the aquifer is sufficient to meet the requirements of the proposed subdivision even during drought conditions, based on their calculations,
- c. that pumping of the aquifer will not deplete water storage in the aquifer, as inferred from the recovery of water levels in both wells,
- d. that the pump tests are extreme conditions and that normal usage of the proposed wells will be significantly less than the pump test rate, and
- e. that, of the 11 wells monitored, only 3 wells showed any interconnection; consequently the wells on the property will likely not all be interconnected.

Based on LBG comments, we have the following responses:

1. The information regarding the pump test on Fusco Well #1 provided as part of their response appears to be complete. The data presented by LBG appears to indicate that the Fusco Well #1 is suitable of providing 5 gpm.
2. LBG's analysis of whether the aquifer can supply the required water demands during normal usage appears to be reasonable. LBG does not discuss whether the water supply in the aquifer can supply during unusual periods such as drought conditions where homeowners are watering their lawns and possibly filling their pools.

Zen Wojcik: I will give you a little summary regarding this memo. At the last meeting, we discussed in the report that there was an unusual drawdown of water that was not explained at Well #1. Mr. Cusack was here at the last meeting. He explained about that quite well the last time; that they also tested that well for the OCHD requirements. They have provided us with an amended report. In our memo, dated 8/17/09, Tectonic's Hydrologist has responded about his review of the amended report. It makes sense. We understand now about the pump test on Fusco Well #1. That part of the response appears to be complete. The data presented by LBG appears to indicate that the Fusco Well #1 is suitable of providing 5 gpm. The other well that was tested was suitable for that. It actually exceeded that. We did have a question that went beyond that data. It was asked what would happen under drought conditions. Mr. Cusack had followed up on that question with an email. Maybe, Mr. Cusack, you could summarize what you had said.

Tom Cusack: There were two minor comments. One of the comments from James Upright, was a comment regarding the water budget analysis. We were trying to qualify the consumption of use of the property, which was basically for irrigation, washing cars, etc... It would be basically something that would not be recharged to get back into the septic systems. The bottom line is that we discussed the consumption of water use, which would be about 4% of the overall recharge under drought conditions, which is a very small percentage of the recharge. The second comment was about a concern that the pumping test that was conducted in the summer months during above average precipitation conditions. We had provided a precipitation chart from January through July 2009, which indicated in May the precipitation conditions were under average and in addition to the prior months were also under average. The months of July and August were above average.

Zen Wojcik: Mr. Chairman, Well #3 was drilled down to a depth of over 300 feet. Well #1 was drilled down to a depth of over 600 feet. The aquifer here is a bedrock aquifer. When it rains today, that water would not get down 600 feet or 300 feet in the matter of one day. That was one of the points that Mr. Cusack was making. It would take awhile for the water to get down there.

Mr. Astorino: Ok. Thank you.

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

Comment #10: \* 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 #11: Provide the recording information on the plan for a map note for preservation of existing drainage channels through subdivided lots.

Comment #12: Provide the recording information on the plan for the dedication of portions of Taylor and Jessup Roads.

Dave Higgins: Ok.

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 proposed 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 (stormwater management facilities and erosion control measures).

Comment #18: \* Pay outstanding review fees.

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

Mr. Bollenbach: We can't close out SEQR. This public hearing would be adjourned.

Mr. Astorino: Right. We still have SEQR issues. Before I open the public hearing, we have received two letters. We received a letter from the Krebs Family, dated 8/11/09 addressed to the Planning Board. We received another letter from Jay Myrow, Attorney for the Krebs family, dated 8/19/09 addressed to the Planning Board. This is a public hearing. If there is anyone in the audience wishing to address the Normajeon Fusco application, please rise and state your name for the record. Let the record show no public comment.

**Mr. McConnell makes a motion to adjourn the Normajeon Fusco Public Hearing to the September 2, 2009 Planning Board meeting.**

Seconded by Mr. Singer. Motion carried; 4-Ayes.

Mr. Astorino: To the residents that came out for the Fusco application, this public hearing has been adjourned to the 9/2/09 Planning Board meeting. There will be no other notices sent out. This is your notice.

Ira Emmanuel: We look forward to wrapping up the SEQR process at that time. Thank you.

Dave Higgins: Thank you.

**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. Continued Public Hearing from the August 5, 2009 Planning Board meeting.

Representing the applicant: Kirk Rother, Engineer. Brian Singer, applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
  - A. Applicant has provided a viewshed analysis – Visual EAF Addendum and line-of-sight profiles.
  - B. Significant trees have been identified and located on the plan.
  - C. Applicant to discuss location of Class B(T) tributary of Long House Creek and freshwater wetlands.
  - D. Applicant to discuss potential onsite habitat for threatened and/or endangered species.
2. Applicant to discuss project.
3. A swale is indicated on the northerly-side of the common driveway between Briller Road and the turnaround, crossing the alleged former bed of a DEC classified stream at the turnaround. The gradient of the swale is approximately 12%. Show appropriate erosion control measures. Provide a means to keep the flow within the proposed swale, ultimately discharging on the applicant's property, and not allowing diversion into the former stream bed.
4. Provide screening plantings, as necessary, to the Town Planner's specification.

**BEFORE FINAL APPROVAL:**

5. 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.
6. Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.
7. Pay parkland fees.
8. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 8/19/09:

Brian and Melissa Singer - The CB's comments on the August 5, 2009 Agenda are repeated here for convenience:

*This project is in the Ridgeline Overlay. The CB has noted (in similar developments in this region) that rattlesnakes may be present. There is also a question of wetlands in this area. The CB recommends the disturbance be carefully monitored to avoid impact on any wetlands and protected species.*

In addition, the CB understands that the applicant is conducting a habitat survey and will delineate the wetlands, extent of tree cover, etc. The CB would appreciate receiving a copy of that study when it becomes available. Finally, to the extent possible the CB urges the PB to examine the full build out potential of adjacent properties and the impacts such potential build out will have on the environment and existing residents.

The following comment submitted by the ARB:

Brian and Melissa Singer – None submitted.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has been acting as Lead Agency on this application using the short EAF. There are two outstanding SEQR issues. The first issue is an issue regarding the wetlands that was reported on the property. We do have a wetlands delineation that was done by Dave Griggs of ERS Consultants. The flags that were put out there were surveyed. Those flags are now shown on the latest submission that the applicant has provided. As we do with all other situations like this, we always asked for a third party verification either through through a Jurisdictional Determination or verification through the Town's wetland consultant. I already have that in motion to have the verification done. We are planning to have Karen Schneller-McDonald go out either by the end of this week or first thing next week. Karen would have to coordinate the time with Dave Griggs.

Mr. Astorino: Ok. That is a SEQR issue. We will have to hold it open.

Mr. Fink: The other issue is that we received a letter today from Dave Griggs of ERS Consultants that does address the issue of rattlesnakes on the property. I would like to contact Dave and ask him about that. I also thought he was going to look for a bat habitat as well on the property. I thought the letter would have said something about that. It was my understanding that he was going to looking at habitats on the property.

Mr. Astorino: Ok.

Mr. Bollenbach: Also, Dave was supposed to check for any other endangered species.

Mr. Fink: Yes.

- A. Applicant has provided a viewshed analysis – Visual EAF Addendum and line-of-sight profiles.

Mr. Astorino: Ted, does anything else stand out on that?

Mr. Fink: No.

Mr. Astorino: Ok. Could we put comments 1 B through D for the record.

Mr. Fink: Yes.

- B. Significant trees have been identified and located on the plan.
- C. Applicant to discuss location of Class B(T) tributary of Long House Creek and freshwater wetlands.

Zen Wojcik: Mr. Chairman, I have a question about that.

Mr. Astorino: Ok.

Zen Wojcik: It was not clear on the plan. This Board has been provided a copy of a document from the DEC back in the year 2005. It came out that the stream that crosses near the property they have identified it and gave it a classification as a Class B Trout stream. It starts out as a pond on the Blake's property and heads down to Long House Creek. That is also shown on the wetlands map that they gave us a copy of. It was last revised in 1995. Mr. Rother has prepared on his plan, two locations of the stream. Evidently, the stream had been blocked by the extension of Briller Road. I don't know what time that happened and who had done that.

Mr. Astorino: Do you mean blocked or re-directed?

Kirk Rother: Zen, that is not what it is.

Zen Wojcik: It comes out as re-directed. That is what I am reading here. That is what I need clarification on. What is going on here? I have the DEC coming up with one plan that shows a stream headed to a pond going almost parallel to the Brian Singer property and the McQuade property. I have two streams showing on your map. One of which is partially called the drainage course and partially another one that parallels Briller Road. It goes down the other way. It is not consistent with what the DEC has. I would like to know what is going on here. How come you haven't spoken to the DEC? Why don't we have a letter from the DEC? Does a culvert have to be placed under the extension of Briller Road to continue this Class B Trout stream? What is going on?

Kirk Rother: There is no stream there. We have received correspondences from Mrs. Briller at the last public hearing, which included a correspondence from the DEC that shows there was a photocopy of their freshwater wetland map. I have the copy of the map right here to show the Board. We superimposed Brian Singer's lots on it. We gave a copy of this to the Planning Board. It shows the stream running through underneath Briller Road. We have all been out there. There is no stream underneath Briller Road. This is a 1987 map.

Mr. Astorino: Where did the stream go?

Kirk Rother: I also have a 1991 USGS map. They are supposed to be the same map. But, in this case they are not. Looking at the USGS map, here is the start of the stream that runs down this way. Here is Brian Singer's property. Here is a tributary to Long House Creek. For some reason the DEC map has this connected and this eliminated. I show both on the plan. I labeled them clearly.

Zen Wojcik: Did you contact the DEC?

Kirk Rother: No.

Zen Wojcik: Could you please contact the DEC?

Kirk Rother: Yes. I will. I was there today. This was never connected. There is probably an 8 or 9-foot rise in elevation in the area of that cul-de-sac.

Mr. Astorino: It would be pretty easy for them to determine that.

Kirk Rother: It is not so easy for them to amend their map.

Mr. McConnell: They don't need to amend the map. They need to send a letter stating that there is no stream.

Brian Singer: We will get it taken care of. There was a lake there. Did anyone see a lake? In 1930, there was a lake. It is dried up now. The stream dried up.

Mr. Bollenbach: Ted, could you get somebody to verify the wetlands?

Mr. Fink: Yes. That is already in the works.

Mr. Singer: Dave Griggs was there. He looked at it. He said there was none.

Mr. Astorino: The DEC has to get a letter out.

Mr. McConnell: The thing is that it might not be there now, but it could be missing from somebody's bad act. That is why we want the DEC to say no it is not there and we don't think anything bad ever happened or whatever.

Zen Wojcik: If we were talking about a Class C stream and it didn't require a permit, there would be no problem. But, it is labeled as a Class B Trout stream.

Mr. Astorino: You will need to get a letter from the DEC.

- D. Applicant to discuss potential onsite habitat for threatened and/or endangered species.

Mr. Astorino: We spoke about that. You are going to speak to Dave Griggs about the bats and whatever else could possibly be there.

Mr. Fink: Yes.

Mr. McConnell: I am familiar with Dave Griggs work with wetlands. But, I am not familiar with his work with wildlife and so on. Has this Board been convinced previously that he has the education or the academic credits for this?

Mr. Singer: He is a Biologist.

Mr. Astorino: We have used him before.

Mr. McConnell: A Biologist encompasses a lot of things.

Mr. Astorino: Dennis, we have used Dave Griggs on numerous projects. We have found his work to be capable.

Mr. McConnell: Ok.

Mr. Fink: Karen Schneller-McDonald who is also a Biologist feels that Dave Griggs is a good Biologist.

Mr. McConnell: Ok.

Comment #2: Applicant to discuss project.

Kirk Rother: There is nothing new.

Comment #3: A swale is indicated on the northerly-side of the common driveway between Briller Road and the turnaround, crossing the alleged former bed of a DEC classified stream at the turnaround. The gradient of the swale is approximately 12%. Show appropriate erosion control measures. Provide a means to keep the flow within the proposed swale, ultimately discharging on the applicant's property, and not allowing diversion into the former stream bed.

Kirk Rother: We will elaborate on that.

Comment #4: Provide screening plantings, as necessary, to the Town Planner's specification.

Kirk Rother: Do you have any discussion about that? It is in the Ridgeline Overlay. I guess that is where the comment is coming from.

Mr. Fink: Yes. That is where the comment is coming from.

Mr. Astorino: There were issues regarding the road easement with taking out trees. I don't know how that was addressed at the last public hearing. I think there was supposed to be some screening by the McQuade property.

Kirk Rother: I am not opposed to it. I am trying to get some clarification.

Brian Singer: I was the one that made the comment about putting in screening. Looking at the map, along this section here, tell me what you want to have.

Mr. Astorino: Get in touch with Ted on that matter.

Kirk Rother: Ok.

Mr. Astorino: Regarding comments 5 through 8, are they the same comments from the last time?

Zen Wojcik: Yes.

Mr. Astorino: We will add comments 5 through 8 for the record. Do any Board members or Professionals have any other comments? This is a public hearing. If there is anyone in the audience wishing to address the Brian and Melissa Singer application, please rise and state your name for the record?

**BEFORE FINAL APPROVAL:**

Comment #5: 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.

Comment #6: Certify setting of iron pins. Surveyor to certify that iron rods have been set at all property corners.

Comment #7: Pay parkland fees.

Comment #8: Pay outstanding review fees.

Mr. Bollenbach: Mr. Chairman, the public hearing will not be closed tonight.

Mr. Astorino: Right.

Mr. Bollenbach: We still have outstanding SEQR issues.

Mr. Astorino: We have a letter from Phyllis Briller, dated 7/30/09 addressed to the Planning Board regarding the easement matter. John, I believe you have a copy of it. We have it in our packets.

Mr. McConnell: It is dated 7/30/09. But, it is marked as received today, 8/19/09.

Connie Sardo: I just received that letter today.

Mr. Astorino: Ok. But, the date on the letter states 7/30/09. Is that correct?

Mr. McConnell: Yes.

Mr. Bollenbach: Yes.

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

Phyllis Briller: If you don't mind. I am going to tape this. On the site plan on page 2, Daniel Yanosh who is the surveyor says that there is a 25-foot ROW for ingress and egress. That goes across Mrs. McQuade's property. He describes the authority as being Liber 2772, page 182. That is the deed that I have given to the Blakes. I have looked at that deed several times and I had 3 attorneys take a look at it. Nobody is finding a 25-foot ROW mentioned in it. Could the applicant comment on this?

Brian Singer: In court yesterday, 27 feet and 32 feet were the two areas that were put as metes and bounds. They wrote it up as a 25-foot ROW in that 27 to 32-foot area. It is 27 to 32 feet mapped out by a surveyor. Ms. Briller's attorney was the one who wrote 25-foot ROW. That was why Dan Yanosh copied it. You could see on the plans 27 feet. On my property is 32 feet at the end of Briller Road. I have been fighting about this for 2 years. I guess that I will keep on fighting.

Kirk Rother: The ROW is 25 feet wide. The ends are on angles. So, they are wider than 25 - feet. It is 27 feet to 32 feet.

Mr. Showalter: What is shown is 32 feet to 27 feet.

Brian Singer: And, it was surveyed. It is Liber 2772, page 182.

Mr. Astorino: John, that would be something you could research on.

Mr. Bollenbach: Yes.

Phyllis Briller: There is a discrepancy with the ZBA. The ZBA provides in their opinion an easement of 27-32 feet. There has never been a reference to 25 feet up until it came from the ZBA back to the Planning Board. Would the ZBA have given them a 2-lot subdivision if they had known that the applicant is now claiming a narrower easement?

Mr. McConnell: We can't answer for the ZBA.

Phyllis Briller: Maybe the applicant needs to go back to the ZBA and ask them. On the site plan on page 3, there is a question of the septic expansion. On one of the lots, there is a 50% expansion area. There is a tree growing right in the middle of it. Could someone help me with that?

Zen Wojcik: The tree would have to come down.

Mr. Bollenbach: That is for the expansion area. Zen, could you go over that a little bit?

Zen Wojcik: The OCHD requires a 50% expansion area in the event that you add on another bedroom or in the event your system fails. You could then add on to that. You don't want to have trees or any type of woody shrubs growing within a leachfield or an absorption field. If they build the absorption field the way they want it and there is a large tree within 50 feet of it, they would cut into the roots. The tree would not live.

Mr. Astorino: The tree would have to come down.

Phyllis Briller: Right. Ok. How will wetlands, mature trees and rock outcroppings be delineated if the project was approved? How do we insure that they are not subsequently destroyed or moved?

Mr. Bollenbach: There are limits of disturbance indicated on the map. It would be an enforcement issue to the Building Department. You could keep the Building Inspector abreast.

Mr. Astorino: It would be like on any other subdivisions with these same concerns that we have done in the past. If they violate the limits of disturbance, they would be held for it.

Phyllis Briller: On other applications that I am familiar with, you have requested stone cairns.

Mr. Astorino: That would be for open space. Cluster subdivisions are for open space. We had numerous instances with wetlands and rock outcroppings that are not "stone cairns around there." They are delineated on the map. That is what we have.

Phyllis Briller: This property is 13 acres. These are 6-acre parcels. In Home Owners Associations, you would have neighbors monitor each other. If there were a problem, it would come out. When you have 6 acres, it would not happen. It would be very difficult to see.

Mr. Astorino: I don't necessarily agree with that.

Phyllis Briller: You are saying that there would not be any delineation.

Mr. Astorino: There will be delineation.

Mr. Bollenbach: There will be delineation on the subdivision plans.

Zen Wojcik: The Building Inspector would be out there several times during construction.

Mr. Astorino: Yes. That is done on all projects.

Mr. McConnell: Is there anything prevented from being messed with 10 years from now, no.

Phyllis Briller: That was my question.

Mr. McConnell: I am sure there would be neighbors watching very carefully.

Phyllis Briller: How does the applicant insure that mature trees would not be killed during construction?

Mr. Astorino: They would not go near them. They will be delineated. They are delineated on the map.

Mr. McConnell: It would be Building Department enforcement.

Mr. Astorino: Yes.

Zen Wojcik: Mr. Chairman, I know that on some applications where we had significant trees identified in the past that the people who owned those properties think of those as an asset. Trees are expensive. If you have two nice trees and you could put a hammock in between them, you would want to keep them.

Mr. Astorino: Right. But, they are delineated on the map.

Phyllis Briller: I had seen 3 rock outcroppings. Are there more than that?

Mr. Fink: I believe there are more than 3 rock outcroppings. I believe there are 4 rock outcroppings shown on the map.

Phyllis Briller: Ok. In your opinion, are they going to be impeding the progress of individuals living there?

Mr. Fink: There is no development proposed in the rock outcrop areas. They are all outside the area.

Phyllis Briller: Ok. Regarding the letter from ERS, dated 8/18/09, there is a sentence at the end of the letter that states; *“As discussed, it is also recommended that the remainder of the property be left intact and deeded as undisturbed open space.”*

Brian Singer: Do you see those rock outcroppings? That is what that is for.

Mr. Astorino: You would have a deeded note.

Brian Singer: I will have it deeded to state please do not touch the rock outcroppings.

Mr. Fink: That was a question I also had. I wanted to get that clarified. We have only seen that letter from ERS today. That was one of the questions that I had.

Brian Singer: The area of disturbance is 1.4 acres. Everything outside of that would be in a conservation easement and open space. Nobody could touch another tree outside of that area. We would have it as open space.

Kirk Rother: So that the Board is aware, if he does put open space on it, he mentioned it would be everything outside the area of disturbance. That is not necessarily true. That line meanders around the construction limits that would probably be squared off.

Mr. Astorino: Ok.

Phyllis Briller: Do I understand that eventhough Brian Singer is defining it as open space, the Town would not require it as open space and would not want it.

Mr. Astorino: I don't believe so. John, this is not a cluster subdivision. Is that correct?

Mr. Bollenbach: It is not a cluster subdivision.

Mr. Astorino: It seems like the applicant is willing to put the rest of this property into this conservation easement.

Phyllis Briller: That is what he is sitting here today saying.

Mr. Astorino: He could also put deeded notes in there if he doesn't want a swimming pool on those lots. That could be his right to do that.

Phyllis Briller: Do I hear the applicant saying that he would put this on as deeded map notes?

Brian Singer: I would do it voluntarily. This was through Dave Griggs when I sat down with him regarding these rock outcroppings. He said that he was concerned if I wanted to blast those away. Look at the map. Would I blast those rock outcroppings out of the way? The answer is no. Dave Griggs said to make sure that we agree not to touch those rock outcroppings. That is what I will do.

Mr. McConnell: Brian, could I make a suggestion?

Brian Singer: Yes.

Mr. McConnell: With that idea in mind, notwithstanding Mrs. Briller wanting to get you to commit to a, b, c, or d. May I suggest that you consult with your professionals as the best way to accomplish what it is you voluntarily offered here this evening. Let us review it. This way we know what you are saying specifically.

Brian Singer: Yes. I will do that.

Phyllis Briller: Thank you.

Mr. Showalter: It sounds like that Brian Singer is trying to be a good neighbor.

Phyllis Briller: Why doesn't the applicant consider clustering? How much more of the open space would be retained since it is prime open space with lots of wildlife, mature trees, and a few protected streams? It would be less expensive for the applicant. We would be saving a goodly amount on 6.5 acres. How much space would be retained as open space or unspoiled area if a cluster subdivision went through?

Mr. Bollenbach: It would be 50% of the total and perhaps with 3 lots and with less open space.

Phyllis Briller: Why can't he cluster it down to 2 lots?

Mr. Astorino: That would be his right.

Phyllis Briller: I believe the Board could require that.

Zen Wojcik: He has a 2-lot subdivision. He seems to have done that.

Mr. Astorino: He was talking about doing a 3-lot cluster. He opted for a 2-lot conventional.

Phyllis Briller: Could the Board require him to cluster?

Mr. Bollenbach: We are not.

Phyllis Briller: I would like to talk about the rights of the Blakes. I am not going to talk about Brian Singer's easement or the deed because we are still in court.

Mr. Astorino: Are you representing the Blakes?

Phyllis Briller: I am not representing the Blakes. Brian Singer, Blakes, and I are linked on this common road maintenance agreement on this common road unpaved area. The Blakes are not here tonight to speak for themselves. I am ½ the agreement with the Blakes.

Mr. Astorino: Do you mean as far as the road maintenance agreement?

Phyllis Briller: I mean as far as the location of their easement is concerned.

Mr. Astorino: I want to make sure we are not going back to the same thing here regarding the 25 to 32-foot easement matter. That would be something we would have to review yet.

Zen Wojcik: The last time out, we had a comment about showing Blake Road. There is a sign out there showing the connection to the end of the extension of Briller Road. They have done that. I am satisfied with that. That was all we needed to see. I don't know what else Ms. Briller wants to discuss.

Mr. Showalter: If the Blakes were that concerned about this, wouldn't they be here tonight?

Mr. Astorino: Or, they could have sent in a letter.

Mr. Showalter: Then, I don't sense any concern with the Blakes.

Phyllis Briller: I have a signed easement agreement with them. I am ½ of that signed easement agreement. I have responsibilities on me as well as them having responsibility on them. The Blakes have a 14 to 15-foot easement from Continental Road to their property. In 1993, we signed an agreement between the two of us that solidified many questions on that easement. For example, one paragraph reads as follows; "The parties agree that the general location of said easement and ROW which is generally described in prior deeds is generally set forth in the survey of Frank Hoens, dated 1991." I have provided you a copy of that survey at the last meeting. It goes on to say that the easement or the ROW shall not be moved by the Blakes beyond the 14to 15 feet ROW without my prior permission. That should not be unnecessarily withheld.

Mr. Astorino: You have brought this up to us at the last public hearing.

Mr. Bollenbach: We are looking for new issues.

Mr. Astorino: We have this.

Ms. Briller goes on to talk about the Singer's deed regarding Schedule B, 2<sup>nd</sup> paragraph about the access over Briller Road and the unpaved traveled way between the McQuade's property and Ms. Briller's property. Ms. Briller goes on to discuss the boundary of the property approximately 31 feet from the easterly corner. She goes on to talk about the Singer's right to upgrade the unpaved traveled right of way.

Mr. McConnell: I thought you were reading something from the agreement with the Blakes. Now, you have Brian Singer in here. Mr. Chairman, I object to this. I understand that Ms. Briller believes this is all-important. Without having it in front of us and without having an analysis by the professionals, I can't even follow what the point is here. I know there is a dispute about the ROW. I know there is a dispute about the roads, etc... I think it is unfair to ask us to try to digest what it is that this means listening to it given to us this way.

Mr. Astorino: I think we have heard this at the last public hearing.

Mr. McConnell: Yes. I am confused. I swear I have heard this.

Mr. Bollenbach: These issues were presented to the ZBA. That decision has already been rendered and granted 280a variance. That is it. The case is closed. The time to appeal that has since past.

Phyllis Briller: I am not questioning the ZBA's wisdom. What I am trying to tell you is that I am trying to compare the requirements that are in the Blakes easement with me and the requirements that are in Brian Singer's easement with me. They are remarkably alike and along the same area.

Ms. Briller goes on to say that, the Blakes cannot move their easement nor have they asked to. She has stated that the Singers have moved their easement and discusses the matter again regarding the easement disputes. Mr. Astorino answers Ms. Briller that it would be a dispute between Ms. Briller and Brian Singer. Ms. Briller does not agree with that. Mr. Astorino states that we have heard this before at the last public hearing. We have it on the record. Mr. Bollenbach has copies of all the deeds. Mr. Bollenbach mentions that the attorneys will have a survey that has been provided and has been signed and sealed. Mr. Bollenbach mentions there is also a Title policy that is in the file.

Phyllis Briller: There are two Title policies. Both of them give Brian Singer the clear ability to come in and go out of their property. Neither policy commits itself to the width or the specific location of the easement.

Mr. Astorino: We have that.

Phyllis Briller: I am simply making you aware of that.

Mr. Astorino: Ms. Briller, that is a civil issue in regards to ciphering that deed.

Phyllis Briller: I do want to have this on the record that the Blakes can't move or widen their ROW without my permission. They haven't tried.

Mr. Astorino: That is fine. We have that on the record. That would be something if the Blakes wanted to send a letter to this Board, they would be more than welcome to do so.

Phyllis Briller: However, if you were going to permit Brian Singer by approving this subdivision as shown with the easement in an area that has not been approved and in an area that would be inappropriate or on top of Blakes easement, which hasn't been discussed.

Mr. Astorino: Ms. Briller, I will defer it to our attorney to advise the Board to decipher all the legal issues and all the deeds. I am not going to go back and forth with you about what is in the deeds, how it is written, or how it is not written. That is why we have an attorney. He will be charged to go through and make a recommendation to this Board on how to proceed.

Phyllis Briller: If you are going to enable Brian Singer's application as shown, it will violate the Blakes easement that I have with them. It would also enable Brian Singer to be violating their deed because they don't have approval from me in writing to do that which they propose.

Mr. Astorino: Ok.

Phyllis Briller: That was what I wanted to bring across. I would like to talk about the proposed construction that Brian Singer is suggesting. The ROW passes McQuade's property. McQuade's property is leveled. The ROW is sloped. By the time you get down about 100 feet from where the telephone pole is on the McQuade's property and you are standing on the easement, there is at least a 4-foot discrepancy between the two. What is the applicant's proposal? Would he be filling the ROW that the Blakes now use to come up to grade with the McQuade's property? Or, would he be cutting back from the McQuade's property?

Mr. Astorino: Do you mean as far as getting to the Singer's property?

Phyllis Briller: As far as constructing this proposed easement.

Kirk Rother: There is a road profile. We would be doing a little bit of both. We would cut around 2 feet and fill that 2 feet.

Phyllis Briller: What is the Board's decision on determining the slope from my house to McQuade's house, which is 300 feet? I explained at the last public hearing that it was approved for two houses in 1977.

Zen Wojcik: It is Briller Road. There is no contention about it in this application. What the Board was concerned with was about the extension of it.

Mr. Bollenbach: It was approved already by the ZBA. The Planning Board was out there. They have looked at it.

Mr. Astorino: I think it was fine.

Phyllis Briller: Without respect to rather it is 14 feet or in excess of 14 feet, which I expect it is, this Board does not care.

Zen Wojcik: There are roads in the Town right now; older roads that don't meet the requirements of the current road specifications. Cherry Tree Hill Lane is one example. The Board has had those choices to accept what is there. The road is there. It is functioning.

Phyllis Briller: And, you are continuing to approve houses to go over it. Is that what I am understanding?

Mr. Astorino: We have not made any decision on that yet.

Phyllis Briller: What is the Board intending to try to do here?

Mr. Astorino: We haven't made a decision on that yet.

Phyllis Briller: Thank you. That was what I wanted to know. With respect to the repaving or the paving of the entire shared driveway including from Continental Road to the applicant's property...

Mr. Astorino: I believe we discussed that it was to be paved from the end of Briller Road. I don't believe the other end needs to be repaved. That was my opinion when we were out there. Do any Board members have any other opinions?

Mr. McConnell: I believe we haven't made a decision on that either.

Phyllis Briller: You will remember that there is no requirement for it to be paved currently.

Mr. Astorino: Unless the Board wants it paved.

Phyllis Briller: Ok. The Board will make a decision on that. Thank you. Were there any questions on the utility easements?

Mr. Astorino: We just received that today.

Phyllis Briller goes on to talk about the construction specs on the road that it is not adequate and it does not meet the specs of Briller Road. Phyllis Briller said that as per the deed, Brian Singer would need her permission regarding the construction specs of the road if it were granted the ability to widen the road. She states that she thinks the construction specs are currently 8" of compacted soil and 2" of course blacktop. Mr. Astorino tells Phyllis Briller that the Board has the specs and are aware of that.

Zen Wojcik: I made a comment one time for Kirk Rother to revise the cross section. I believe he has done that. It is consistent with what is in the Town Code for a common driveway.

Mr. Astorino: Ok.

Phyllis Briller: Except that Briller Road was constructed with 12" of shale 6" of item #4.

Zen Wojcik: We had this discussion the last time about how we are treating the portion of the road that the Board has been considering over here. My impression is that Briller Road is defined as from Continental Road to McQuade's driveway. That is Briller Road. What Brian Singer is here in front of us for is the extension of that as a common driveway, which is not Briller Road. It is the extension of Briller Road. He would probably have a Briller Road address because it would be more convenient that way. What the Board has been considering is the extension of Briller Road. It is not Briller Road. It would not be built to that standard. It would be built to the standard of a common driveway.

Phyllis Briller: Except, by deed it needs to be built to the standards that I have specified.

Mr. Astorino: That is a civil matter.

Phyllis Briller: I have a question regarding the protected stream where it crosses that area. I have a little bit of experience in that. You might want to consider looking at the Natural Resource map.

Mr. Astorino: We are going to have the DEC make a decision on that.

Phyllis Briller: When the Blakes had their 2-lot subdivision in front of you, they provided a resource map. The resource map shows the flow of water along their land. It also shows it as collecting right along my property line and flowing down under Continental Road.

Zen Wojcik: The document was provided to this Board that defines a line that is being a protected stream. That is different than what is shown on this plan. It seems to be in conflict with the plan. I am asking for the DEC to clarify that.

Mr. Astorino: Zen, it is not an issue. We discussed it. That is done.

Phyllis Briller: I have a question on swales. I heard Mr. Rother say at the last meeting that in addition to what they feel would be 16 feet, there would be swales on either side because there is property on either side. Could you explain to me the width of the swales or the number of swales.

Zen Wojcik: On the plan, it shows a swale on one side of the road. It is to take drainage off the road and move it down towards Brian Singer's property. It would continue along one side of the driveway then go in back of the house of proposed lot #2. It would go into a rip-rap lined swale outlet. That would then go towards one of the wetland areas, which would be fine. The work has to be done within the easement limits. It would be 16' wide roadway. He has a 25-foot wide easement, which means he has 9 feet clear for this swale. That would be more than enough room for this swale.

Phyllis Briller: Maybe, he has 9 feet. The problem is that Blakes easement is still there. Would he be superimposing his easement on the Blakes easement?

Zen Wojcik: That would not be a decision that I or the Board could make.

Mr. Astorino: The Blakes would have to take that up with Brian Singer in court.

Phyllis Briller: It is an issue that I have. I am a party to both.

Zen Wojcik: Looking at the typical cross section for the common driveway, it shows a 16-foot wide common driveway with a 6-foot swale, which would give a total of 22 feet.

Phyllis Briller: Would that be on the northerly side?

Zen Wojcik: Yes.

Phyllis Briller: Regarding the wells and testing, what would the Board be doing on testing wells or monitoring other adjacent wells?

Mr. Bollenbach: None is proposed.

Phyllis Briller: Eventhough we have yields all over the map? That is well documented on top of Mount Peter.

Mr. McConnell: I haven't seen that documentation.

Phyllis Briller: How about the Daly property?

Zen Wojcik: On the Daly property, the houses are much closer together. These houses are further apart.

Mr. Astorino: We could discuss digging a well prior to a building permit or something to that end and get the yield. That would be something that we have yet discussed.

Phyllis Briller: Are we continuing this public hearing?

Mr. Astorino: Yes.

Phyllis Briller: Thank you.

Mr. Astorino: Is there anyone else wishing to address the Brian and Melissa Singer public hearing? Let the record show no further public comment. We are going to have Karen Schneller-McDonald run out there either by the end of this week or next week. Ted, is that correct?

Mr. Fink: Yes.

Mr. Astorino: We will need to adjourn this public hearing to the September 2, 2009 Planning Board meeting.

**Mr. McConnell makes a motion to adjourn the Brian and Melissa Singer Public Hearing to the September 2, 2009 Planning Board meeting.**

Seconded by Mr. Showalter. Motion carried; 4-Ayes.

Kirk Rother: Thank you.

**Review of Submitted Maps:*****Pond in the Meadow #2***

Application for “**Amended**” Final Approval for 2-Existing Lots in the Pond In The Meadow Subdivision, situated on tax parcels S 19 B 1 L 51 and L 52; parcel located on the eastern side of NYS Route 17A/94 1200 feet south of Minturn Road with frontage on Minturn Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York. Final Approval was granted on October 5, 2005.

Representing the applicant: Jeremy Valentine from Lehman & Getz Engineering.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.
3. Provide a revised metes & bounds description of the proposed Common Driveway Easement.
4. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 8/19/09:

Pond In The Meadow #2 – The CB has no comments.

The following comment submitted by the ARB:

Pond In The Meadow #2 – None submitted.

Comment #1: Board to discuss SEQR.

Mr. Fink: The Planning Board has already issued a Negative Declaration on this project before final subdivision approval was granted. The applicant has provided us with a new EAF. In a case like this, the Board has a couple of different options. One would be to amend the Negative Declaration if there would be any potential for any adverse impacts as result of the changes. The changes that the applicant provided to us would actually reduce the impact because of the consolidation of the two driveway access points. I don't believe SEQR would necessarily need to be reopened at this point.

Mr. Astorino: Ok.

Comment #2: Applicant to discuss project.

Jeremy Valentine: We shifted the driveway over to save some trees. We gave an easement for that purpose.

Comment #3: Provide a revised metes & bounds description of the proposed Common Driveway Easement.

Jeremy Valentine: Ok.

Comment #4: Pay outstanding review fees.

Jeremy Valentine: Ok.

Mr. Astorino: Do you request the public hearing to be waived?

Jeremy Valentine: Yes.

Mr. Bollenbach: On comment #3, we will need to add to that comment “with recording information to be placed on the map to the Planning Board Attorney’s specifications?”

**Mr. McConnell makes a motion to waive the public hearing.**

Seconded by Mr. Showalter. Motion carried; 4-Ayes.

Mr. Showalter makes a motion on the Pond In The Meadow #2 application, granting “*Amended*” Final Approval for 2-Existing Lots located in the Pond in the Meadow Subdivision, situated on tax parcels S 19 B 1 L 51 and L 52; parcel located on the eastern side of NYS Route 17A/94 1200 feet south of Minturn Road with frontage on Minturn Road, in the RU zone, of the Town of Warwick, County of Orange, State of New York. Final Approval was granted on October 5, 2005. Amended Final Approval was granted, subject to the following conditions:

1. Provide a revised metes & bounds description of the proposed Common Driveway Easement with recording information placed on map to Planning Board Attorney’s specifications.
2. Pay Outstanding Review Fees.

Seconded by Mr. Singer. Motion carried; 4-Ayes.

Jeremy Valentine: Thank you.

**Other Considerations:**

1. **Marco Giovannoli Subdivision** – Letter from Robert McManus, Attorney, dated 8/4/09 addressed to the Planning Board in regards to the Giovannoli Subdivision – requesting “***Re-Approval***” of Final Approval of a proposed 3-Lot subdivision, situated on tax parcel S 12 B 3 L 33; parcel located on the northern side of Little Brooklyn Road 830± feet east of C.R. 1, in the AI zone. Final Approval was granted on 8/20/08. 6-Month Extension was granted on 2/18/09 became effective on, 2/20/09. *The applicant has undergone significant financial difficulties as a result of the downturn of the real estate market and this has impacted on his ability to complete the subdivision within the original timeframe.* “Re-Approval” of Final Approval becomes effective on, 8/20/09.

Mr. McConnell makes a motion on the Giovannoli Subdivision, granting “***Re-Approval***” of Final Approval of a proposed 3-Lot subdivision, situated on tax parcel S 12 B 3 L 33; parcel located on the northern side of Little Brooklyn Road 830± feet east of C.R. 1, in the AI zone, of the Town of Warwick, County of Orange, State of New York, subject to the conditions of Final Approval granted on, 8/20/08. The “Re-Approval” of Final Approval becomes effective on, 8/20/09.

Seconded by Mr. Singer. Motion carried; 4-Ayes.

2. Planning Board to discuss Memo from Supervisor Sweeton, dated 6/26/09 in regards to Planning Board in receipt of Zoning Petition at the 7/15/09 PB meeting for the Lands of Pankin for recommendation to the Town Board.

Mr. Astorino: Ted, did you prepare that for us?

Mr. Fink: Yes. I prepared a draft letter for the Board following the Zoning Law guidance to the Planning Board in situations like this where zoning map changes are proposed. There are 5 different criteria that the zoning specifies. I went through each of those criteria. I had done an analysis. I have written up some recommendations that the Planning Board could provide to the Town Board. I had done that first in an early draft. John had found a couple of corrections that needed to be made in it. I believe that Connie had sent out today by email and also provided you with an updated version that was corrected. You should have that in your packets today for your review.

Mr. Bollenbach: I want to point out the revisions that were made. In the first paragraph, there were multiple public hearings. It just reflects the additional public hearings. In the last paragraph on the first page is that this parcel has been zoned OI use since 1966. At that time it was designated as an LB zone. But, within the LB zone use groups, office and industrial manufacturing uses were also permitted. The only other revision would be in subparagraph (a) where it goes onto “However, the subject parcel is immediately adjacent to the US Bus Manufacturing Company facility, a commercial strip, the railroad, a nearby airport, and numerous other OI Zoned parcels yet to be developed, so there is a potential for incompatibility.” It is just to recognize what is exactly out there. That is it.

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

Mr. McConnell: Could someone provide us with a map that shows us those other OI zoned parcels that are yet to be developed?

Mr. Bollenbach: You could take a look in the back room.

Mr. McConnell: Ok.

Mr. Fink: I could blow it up and email it to you.

Mr. McConnell: Ok. I just want to have a sense on where they are.

Mr. Astorino: Ted, I have found that you have done a real good job on this letter. It was well written. I don't have any problems with it. How does the rest of the Board feel?

Mr. Singer: I don't have any problems with it either. Let us get Rogers opinion and maybe approve it tonight.

Mr. Showalter: I like it. I don't have any problems with it.

Mr. Astorino: Dennis, are you willing to do that?

Mr. McConnell: Yes. I have read both drafts. I had complimented Ted earlier on this.

Mr. Singer makes a motion to approve the June 26, 2009 Zoning Petition Referral Letter on Lands of Pankin as written.

August 19, 2009

Michael Sweeton, Supervisor  
Town Board of the Town of Warwick  
132 Kings Highway  
Warwick, NY 10990

Re: June 26, 2009 Zoning Petition Referral  
Lands of Pankin

Dear Supervisor Sweeton and Members of the Town Board:

The Planning Board is in receipt of your request for a recommendation concerning a Zoning Map change for an individual parcel of land identified as the "Lands of Pankin," with a Section Block and Lot number of 35-1-21, located on Lake Station Road. The site is currently Zoned for Office and Industrial Park (OI). As the Town Board is aware, the owners of this property have an active application for Subdivision, Site Plan and Special Use Permit approvals currently under review by the Planning Board. Public Hearings were held by the Planning Board on May 6 and June 17, 2009 and the

Hearings have been adjourned without date pending the receipt of additional information from the applicant.

The Planning Board acknowledges the source of the petition as the neighbors of the subject property. The Public Hearing that was held was well attended by the neighbors, many of which voiced strong objections towards the applications under review by the Planning Board. Based upon our review of the Petition, the signatories on the Petition did not specify which Zoning District they were proposing, which poses a challenge from the Planning Board's perspective.

As the Town Board is well aware, each of the 10 Zoning Districts in the Town (excluding overlay and floating districts) carries with it a separate list of specific permitted and specially permitted uses together with a wide variety of differing area and bulk requirements (approximately 55 depending upon the use). Thus, the Planning Board is unable to respond in a direct manner to the proposed Petition since it excludes a critical identification of a suitable Zoning District. Nevertheless, to go forward, the Planning Board has completed a review of the Zoning Districts found in the surrounding area and made some recommendations.

The subject parcel has been Zoned for office and industrial uses since 1966 due to its proximity to the railroad, industrial growth occurring to the north in Chester and the area's proximity to the Route 17/Interstate 86 development corridor. The parcel is surrounded by other lands Zoned OI to the north and east of the site. Lands to the south of the site are Zoned for Suburban Residential-Medium Density (SM), and these lands have been largely developed with single family residences along Shepard Road, Glenn and Grissom Streets, and Park Drive. Lands to the west, between the railroad and Kings Highway, are Zoned for Designed Shopping (DS). Immediately northwest of the site between the railroad and Kings Highway, there are several parcels zoned Local Business (LB). Beyond that, the lands west of Kings Highway are Zoned largely SM.

Since the Zoning Petition did not specify a Zoning District to which the Town Zoning Map would be changed to, other than a reference to "either Agricultural or Residential", the Planning Board must infer a reasonable District upon which to base their analysis. Since the nearest instance of the Agricultural (AI) Zoning District in the Town of Warwick is over four miles from the parcel and none of the soils on site are considered "Prime Agricultural" soils, the Planning Board eliminated consideration of this Zoning District. As we are sure the Town Board is already aware, the OI District presently allows commercial agriculture as a Permitted Use by right.

The Town Supervisor reminded the Planning Board of the guidance that the Zoning Law provides when a Petition has been submitted for a Zoning Map change, by attaching a copy of § 164-60.A(2) of the Zoning Law. The Planning Board has analyzed an assumed Zoning Map change to the SM Zoning District, since that is the District that a preponderance of the residentially zoned lands in this area of the Town are currently zoned for.

As stated in § 164-31.F of the Zoning Law, "The purpose of the Suburban Residential Medium Density District is to allow for the development and redevelopment of residential parcels where central water and sewer services are available and to allow a limited extension of such suburban growth patterns provided water and sewer services are constructed by developers..." This parcel contains several community wells and

much of the existing residential and commercial development on the surrounding lands are served by either the Warwick Water Company or the Wickham Water District. The Town Sewer District No. 1 also serves much of this existing development.

As a land use control tool, Zoning acts principally to segregate uses that may be incompatible. Instances occur however, where incompatible uses cannot be entirely segregated, even within a single zoning district. This is a purpose of the Special Use Permit process. There are instances where municipal government wishes to encourage certain uses, due to the unique suitability of the land or its proximity to specific services, such as water and sewer or transportation facilities, such as the railroad. This the Planning Board believes, was the intent of the OI Zoning District in this area of the Town, based upon a reading of the 1987, 1999 and 2008 Comprehensive Plan documents. With the exception of Agriculture and Town of Warwick uses, all other uses in the OI Zoning District require issuance of a Special Use Permit. Following are the Planning Board's analysis and recommendations, with the Zoning Law requirements repeated first in **boldface**:

- (a) ***Whether the use permitted by the proposed change would be appropriate in the area concerned.*** The Zoning Petition requests a very generalized change in the Zoning map from the current Office and Industrial Park District to "Agricultural or Residential." The Planning Board has conducted its analysis on the basis of the parcel being rezoned to Suburban Residential Medium Density (SM) District for the reasons cited above. In the SM District, uses permitted by right include One-family dwellings, Two-family dwellings, and Town of Warwick Uses and Buildings. Special Permit Uses include Townhouses. The area already contains a variety of One- and Two-family dwellings in the Wickham Knolls and Wickham Village subdivisions, and Townhouses can be found in the Kings Estates/Sugar Hills developments so these uses may be compatible with the adjoining or nearby uses. However, the subject parcel is immediately adjacent to the US Bus Manufacturing Company facility, a commercial strip, the railroad, a nearby airport and numerous other OI Zoned parcels yet to be developed, so there is a potential for incompatibility.
- (b) ***Whether adequate public school facilities and other public services exist or can be created to serve the needs of any additional residences likely to be constructed as a result of such change.*** The subject parcel is ± 20 acres in size. The current applications include a subdivision of the site to separate ownership of Warwick Water Company wells from the remainder of the parcel. Assuming that this action must occur regardless of any future development of the remainder of the parcel (i.e. either commercial or residential), the area of the parcel potentially available for future development is approximately 12.5 acres. The SM District requires ½ acre for each One-family dwelling. A theoretical residential development of the subject parcel could potentially support 18 One-family dwellings, assuming 25 percent (a "build-out" standard in wide use) of the 12.5 acres were devoted to roads, drainage and other undevelopable areas and each dwelling was sited on a ½ acre lot served by community water and sewer.

The site is within the Warwick Valley Central School District and, using US Census data, an anticipated 22 school aged children would reside there (using Rutgers University Center for Urban Policy Research multipliers, a planning standard). No attempt has been made to contact the School District to determine whether sufficient capacity exists to enroll students in the elementary, middle and/or high schools,

were a theoretical 18 unit development to be built on the site in the future, since this would be highly speculative as to timing and enrollments that may be many years in the future. However, the Planning Board notes that over the past few years, news reports have indicated that the School District has seen declining enrollments.

In terms of other public services, such as the current capacities of water and sewer, the Wickham Water District is currently overcapacity. A new well has been planned to be added before the end of the year so that additional users can be added and current water restrictions can be lifted. However, according to the Town Engineers, significant additional users may overtax this community water system even with the addition of the new well. The Town's Sewer District No. 1 is currently at 75 to 80 percent of capacity, so there is additional room for some users.

- (c) ***Whether the proposed change is in accord with any existing or proposed plans in the vicinity.*** The proposed change is not in accord with any existing or proposed plans in the vicinity. In 2007 and 2008, the Town Board completed a thorough update of the Town's Comprehensive Plan. The Plan recognizes that the OI Zone has not attracted any substantial commercial or industrial development in the "Airport" area of the Town and cites a lack of water and sewer infrastructure and the presence of wetlands in some of the OI zones as contributing causes. However, this OI Zone has potential access to the Wickham Water and Sewer Districts and the subject parcel does not contain wetlands in the area outside of the three proposed well site locations proposed for subdivision of the site. Therefore, this site represents a potential location for non-residential development as envisioned by the Comprehensive Plan. Further, what is troubling for the Planning Board is that there are no concrete recommendations in the 2008 Comprehensive Plan for a rezoning of this parcel or any other parcel in this area of the Town. New York State Town Law at § 272-a(11) mandates that "*All town land use regulations [such as Zoning] must be in accordance with a comprehensive plan adopted pursuant to this section.*" To ensure that the Town Board does not act contrary to New York State Law, the Planning Board believes that an examination must be made of this issue in the context of the Town Comprehensive Plan. Having just completed a Comprehensive Plan update last year, it would seem prudent to follow the guidance of New York State Law to revisit the Comprehensive Plan at the interval established in the Plan, namely every three to five years. The Town has established this as an appropriate interval to address land use issues that arise from time to time. To do otherwise would invite ad hoc planning, which is contrary to New York State Law and the recommendations of the planning profession.
- (d) ***The effect of the proposed amendment upon the growth of the town as envisaged by the Town of Warwick Comprehensive Plan.*** The Comprehensive Plan recommends that an increase in residential densities be considered in the Route 94 Warwick Turnpike area and also concentrated around the existing hamlets of Bellvale, Pine Island, Edenville, New Milford, and Amity. No recommendations were made to increase residential densities in the Warwick Airport area of the Town. This again is an example of a potential inconsistency between the Comprehensive Plan and the proposed Zoning Petition, which would put the Town Board in a position of acting contrary to New York State Law.
- (e) ***Whether the proposed amendment is likely to result in an increase or decrease in the total zoned residential capacity of the town and the probable effect thereof.*** The proposed Zoning Map amendments would likely result in an increase

in the total zoned residential capacity of the Town. The probable effect would be the generation of approximately 70 new residents including 22 school aged children, additional vehicle trips of approximately 180 per day on Lake Station Road and other area roads (as per the Institute of Transportation Engineers' *Trip Generation Manual*), the need for approximately 8,550 gallons of potable water per day with corresponding additional burden on sewage disposal in a comparable amount (as per NY State Department of Environmental Conservation Standards), approximately 12 acres of additional impervious surfaces or disturbed natural areas along with increased stormwater runoff, and the generation of approximately 79 tons annually of solid waste. By contrast, the proposed warehouse buildings would not generate any residents nor school aged children, water use and sewage disposal would be negligible, approximately 2.92 acres of buildings and gravel drives/parking would be generated, and no additional solid waste has been projected. While the proposed warehouse development would result in a significant disturbance to the site, approximately seven and one-half (7 ½) acres would remain undeveloped if approved.

In conclusion, the Planning Board has made a careful inquiry and determination in regards to the proposed Zoning Petition, has reviewed the potential changes that would result if the Zoning Map was amended to allow residential development of the site, rather than leaving the site zoned for the OI District. The Planning Board's recommendation to the Town Board is not to consider any changes to the Zoning Map at this time, especially given the need, under New York State Law, to reopen the newly adopted 2008 Comprehensive Plan.

For the Town of Warwick Planning Board,

Benjamin Astorino

Chairman

Seconded by Mr. Showalter. Motion carried; 4-Ayes.

Mr. Astorino: Ted, thank you for doing that for us.

Mr. Fink: Ok.

3. **Castle Tavern/Cove/Calandra Associates** – Planning Board to discuss violations and proposed Planning Board project, located at 8 Castle Court, SBL # 76-1-33.12. (See John Hicks, Town Attorney letter attached).

Representing the applicant: Stewart Rosenwasser, Attorney. Kirk Rother, Engineer. Mike Calandra, Applicant.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
2. Applicant to discuss project.
3. Applicant has been issued a series of Violations by the Building Department. Applicant to discuss:

- Complaint #20090267 – Illegal Signs
  - Complaint #20090265 – Work within Designated Protection Area of Greenwood Lake without PB approval
  - Complaint #20090264 – Building without permit (need site plan approval)
  - Complaint #2009063 – No C/O or C/C (interior renovations)
  - Complaint #2009066 – Fire/Safety
4. Applicant to discuss proposed change/expansion of use.

The following comment submitted by the Conservation Board:

Castle Tavern/Cove – None submitted.

The following comment submitted by the ARB:

Castle Tavern/Cove – None submitted.

Comment #1: Board to discuss SEQR.

Mr. Fink: The applicant has provided us with a short EAF. It is an Unlisted Action. The Planning Board could go ahead and declare Lead Agency.

Mr. McConnell makes a motion for Lead Agency.

Seconded by Mr. Singer. The following Resolution was carried 4-Ayes.

617.6

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

Name of Action: Castle Tavern Site Plan

Whereas, the Town of Warwick Planning Board is considering action on a proposed Site Plan/Special Use Permit application by Calandra Associates LLC for a ± 1.03 acre parcel of land located at 8 Castle Court, Town of Warwick, Orange County, New York, and

Whereas, an Environmental Assessment Form (EAF) dated 8/13/09 was submitted at the time of application, and

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

Whereas, the Planning Board has determined that the proposed project is not within an agricultural district and, therefore, the requirements of 6 NYCRR 617.6(a)(6) do not apply, and

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

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

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

Comment #2: Applicant to discuss project.

Stewart Rosenwasser: Mr. Calandra wishes to perform some renovations more in the line with upgrading the property. I know that there is some misunderstanding that he is going to enlarge or modify the use or change the use. That is simply not the case. I think the term catering or catering hall might have been in doubt. It was my understanding and I don't have as much information yet regarding this particular restaurant. It has been running for many years as a food service establishment/restaurant. It operates both upstairs and downstairs. It is licensed by the NYS Liquor Authority, both the downstairs and upstairs bars for on the premises services. It was my understanding that we will be submitting evidence to this effect that this is not a catering hall although it does provide the ability of the owner to accommodate large parties. I believe there has been a long-standing history of events being held where they could be accommodated upstairs. But, it is not a catering hall. It is a full service restaurant. But because of its configuration, it has the ability to serve at one time 10 or 50 people that are all together for one event. In the short time since I have represented Mr. Calandra, it is not his intention to open up a catering hall. Mr. Calandra did get a little head of himself by doing some work without required permits. That is why we are here. We hope to bring everything into compliance.

Mr. McConnell: You made a distinction between a food service establishment and a restaurant. What does it mean?

Stewart Rosenwasser: His Health Department permit permits him to operate a food service establishment. He is a full-serviced restaurant in a traditional sense.

Mr. McConnell: So, you are using those terms interchangeably, food service establishment and restaurant means the same thing.

Stewart Rosenwasser: It could.

Mr. McConnell: What could be the difference?

Stewart Rosenwasser: A food service establishment could be McDonalds with a drive-thru also.

Mr. McConnell: Are you proposing a drive-thru?

Stewart Rosenwasser: No. I am proposing to continue.

Mr. McConnell: I am trying to figure out why you have used two different phrases if they mean the same thing.

Stewart Rosenwasser: Not all food service establishments are restaurants. But, all restaurants are food service establishments.

Mr. McConnell: Which is it that he would be running?

Stewart Rosenwasser: He would be running a restaurant.

Mr. McConnell: Ok. Could we strike food service establishment from your presentation?

Stewart Rosenwasser: If you would like.

Mr. McConnell: I am not trying to put words into your mouth. I am just trying to understand what it is you are asking. Which is it that we are looking at?

Stewart Rosenwasser: He is operating a full-service restaurant establishment. The Health Department's permit itself does not say that he is authorized to operate a restaurant. The term that is used by the OCHD says that he may operate a food service establishment. The food service establishment that he is running is a restaurant.

Mr. Astorino: It would have to fall within the purview of our code.

Mr. McConnell: That is what he intends to continue to do?

Stewart Rosenwasser: That is correct.

Mr. Astorino: We haven't seen any maps yet on this. That will be forthcoming.

Mr. Bollenbach: Who is the applicant's engineer?

Kirk Rother: I am as of two days ago.

Mr. Astorino: Kirk, you will have some work to do on this one.

Comment #3: Applicant has been issued a series of Violations by the Building Department. Applicant to discuss:

Mr. Astorino: I am sure you are fully aware of all the violations.

Stewart Rosenwasser: I need some clarification regarding the signs.

Mr. Astorino: There is a complaint on the illegal signs. I am not sure if it is because of the size or what.

Zen Wojcik: Mr. Chairman, it would be good value to go through these violations one-by-one. This way we could establish what the Planning Board is expecting to see.

Mr. Astorino: Yes. We will go through them.

Zen Wojcik: The application is pretty broad right now.

- Complaint #20090267 – Illegal Signs

Mr. Astorino: That probably deals with the size, lighting, etc... That would have to comply with the Town's Code.

Mr. Bollenbach: Correct.

Mr. Astorino: Mr. Rother will have no problem with knowing what that is.

- Complaint #20090265 – Work within Designated Protection Area of Greenwood Lake without PB approval

Mr. Astorino: That is self explanatory.

Stewart Rosenwasser: There was a deck and a storage area put on.

Mr. Astorino: Zen, is it within 100 feet of the lake?

Zen Wojcik: It is within 100 feet of the lake. Mr. Batz has provided us with some photographs.

Mr. Astorino: Yes. We have those photographs. We see that there is a little shed off the back.

Zen Wojcik: Regarding the shed, there is a copy of a map that was prepared by Greg Andersen the architect. I am not clear on the shed that Mr. Batz has photographs of if it is already under construction or the addition that Mr. Andersen was proposing.

Stewart Rosenwasser: Yes. It should be the same. It is 14 feet out and 40 feet long. That is it.

Zen Wojcik: Ok. There is a wall out by the entrance that Mr. Batz had cited. I had a couple conversations with Mr. Batz. I can't figure out why there is a wall there. Do you have any idea what that is?

Mr. Astorino: Is it storage attached to extra wall. Zen, looking at the photograph, are you talking about this wall here?

Zen Wojcik: Yes. It shows storage attached to a wall on the left side with some scaffolding.

Mr. Astorino: They would have to provide this information to us.

Zen Wojcik: Yes. What is this? Where is this? That needs to be defined.

Mr. Astorino: Exactly. They need to answer each one of these violations. They need to show us what is going on. We have nothing here except some black and white pictures. We will need to know that.

Kirk Rother: Mr. Calandra has just said a portion of this is just a decorative wall between the two existing walls.

Mr. Astorino: Is a portion of this going to be a decorative wall when it is finished.

Stewart Rosenwasser: That is what he has said.

Mr. Astorino: The bottom line is that we have to have this stuff provided.

Mr. McConnell: When it is provided, we would like to have some context with that.

Mr. Astorino: Right.

Kirk Rother: I will add that.

Mr. Bollenbach: Kirk, would the maps be provided prior to the 9/2/09 Planning Board meeting?

Connie Sardo: We have a workshop on Monday.

Mr. Bollenbach: He wouldn't have it by Monday. We just need a reasonable date when you could provide those maps before the 9/2/09 Planning Board meeting.

Kirk Rother: I could probably have some of this done by Monday.

Mr. Bollenbach: Ok. Let us put this application on for Monday night's work session.

Kirk Rother: At the very least, I could get you a site plan that shows what was done and where it was done so that you could relate them to these pictures.

Mr. Astorino: Ok.

- Complaint #20090264 – Building without permit (need site plan approval)

Zen Wojcik: This relates to a previous permit that was issued by the Building Department. There might be interior work. All of his violations are to be resolved through the action of the Planning Board. I believe we will have to see something on the interior on the plans to satisfy the violation. That is a point to be made. We don't normally see that. I would ask Mr. Andersen to provide you with that information. I don't know what that situation is.

Mr. Astorino: Ok. We will need to see what has been done and what is proposed to be done.

Kirk Rother: Ok. We will investigate that.

- Complaint #2009063 – No C/O or C/C (interior renovations)

Mr. Astorino: We discussed that regarding the interior renovations.

Kirk Rother: What is C/C.

Mr. Bollenbach: It is Certificate of Compliance. That would be for non-habitable structures.

- Complaint #2009066 – Fire/Safety

Mr. Astorino: That is another issue. If it hasn't been inspected, it hasn't been brought up to code.

Zen Wojcik: Part of the fire/safety issue goes to the designated protection area. There is evidently a tent that is placed outside. NYS has something in the code that says if you have a tent in a public area, it needs to be brought up to the code standards.

Stewart Rosenwasser: Apparently, that has been addressed. They ordered a fire retardant canopy. Apparently, the Fire Inspector and the Electrical Inspector were there. I believe a certificate was sent over to the Building Department.

Mr. Astorino: Are you still operating at this point?

Stewart Rosenwasser: Yes.

Zen Wojcik: That was placed on a platform or a deck or something. I am not sure where that is. I am not sure if it is over the water or on the land. Mr. Bollenbach and I have been looking through the old files. John, I believe there was an approval from the ACOE for part of the Marina.

Mr. Bollenbach: Yes. We will have to compare it with the prior approvals.

Stewart Rosenwasser: There was a deck in this area according to Mr. Calandra. It was 10 feet out.

Zen Wojcik: Mr. Calandra may be the unfortunate to hold it at the end of the line. There were several owners. We don't know who did what.

Stewart Rosenwasser: Ok. He may very well be.

Mr. Astorino: What about a dye test on the septic?

Zen Wojcik: That is part of the work in the designated protection area. We will have to do a dye test. That is another question that has come up. The Building Department has received complaints. I have spoken to Mr. Batz about it today. He hasn't issued a violation for this because he feels that within the context of going through the work within a designated protection area that the Board would be doing a septic dye test.

Mr. Astorino: Why don't we get that on board ASAP? This way we would know what is going on with this project.

Zen Wojcik: Tectonic will coordinate that with Mr. Calandra.

Mr. Bollenbach: Zen, maybe take a look through the files. I talked to Mr. Rosenwasser. He was under the impression that they did provide a County Health permit for the septic system.

Zen Wojcik: We received a County Health permit for the restaurant.

Stewart Rosenwasser: It wasn't for the system. It was for operating with what they are operating.

Mr. Bollenbach: Ok. I believe there were some renovations that were done to the system. That is what we will need.

Stewart Rosenwasser: I wasn't aware of that.

Mr. Bollenbach: We need to find out what capacity was and what was approved. I also spoke to Mr. Rosenwasser if he could get the State Liquor Authority prior licensed approvals to show which areas were used for seating or storage. We need to know what the occupancy of the restaurant facility was and what was proposed.

Stewart Rosenwasser: Yes. We are going to foil the prior two owners. They did issue permits for up and down stairs. It was contemplated and used for service for both upstairs and downstairs. These are continuously licensed premises for many years.

Mr. Bollenbach: What we are evaluating now, I have some notes here. Zen and I met with Mr. Calandra back in May of 2009. We went over §164-46B(5), which is entitled Expansion and change of uses. Site plan and special use approval shall be required involving a change of use to a more intensive use on the basis of increased water supply, sewage disposal, stormwater runoff management, parking needs, traffic generation, or zoning compliance. It states that a building permit and certificate of occupancy shall not be issued for such uses or buildings without first obtaining approval from the Planning Board.

Mr. Astorino: There is also lighting.

Mr. Bollenbach: Yes. That would be compliance with the zoning requirements. That would also be the same with the signage. Everything has to be brought up to speed. Back in May, Mr. Calandra had posted a \$500.00 Building Department review. At that time Mr. Calandra indicated that he would be immediately providing plans and documentation to demonstrate whether the use was of no greater intensity. If so, then Planning Board approval would not be required. That was where we were.

Stewart Rosenwasser: We still are.

Mr. Bollenbach: Now it has come to the Building Department's attention that there has been additional work done within a designated protection area. The applicant is now properly before the Planning Board.

Stewart Rosenwasser: And, we are here now.

Mr. McConnell: Has there been additional work done since the meeting in May?

Mr. Bollenbach: I believe so.

Mr. McConnell: I find this offensive. Do we have the authority to put a lock on the door?

Mr. Bollenbach: That would be the Town's next alternative. The applicant was given an ultimatum to appear. The applicant is now here. They have secured the services of an engineer. They have indicated that they would have some documentation for us by a work session for us to look at and to diligently proceed with the approval.

Stewart Rosenwasser: We are not conceding if work was done since May.

Mr. Astorino: Ok. You know what you have to do with this.

Comment #4: Applicant to discuss proposed change/expansion of use.

Mr. Astorino: You have mentioned that you were not changing or expanding.

Stewart Rosenwasser: Correct. We will produce evidence of its prior occupancy limits, proof of its prior use, and licensing.

Mr. Astorino: You will need to get us the calculations for the septic system.

Zen Wojcik: There is just one other thing. This Board had an application from the previous owner for a lot line change. There is a map that shows the building going over the property line. I don't know if the Planning Board wants to include something about that in this application or not or a referral to the ZBA because there is no side yard.

Mr. Astorino: He probably should. He might as well clean it up all at once.

Zen Wojcik: I just wanted to bring that to you attention.

Mr. Astorino: We have to get the plans first. We don't have anything in front of us. Let us get it on this application. We will have this on the 8/24/09 Work Session.

Stewart Rosenwasser: Does the Board wish to have another application to include the deck. As I am reading the application, it includes the canopy but not the deck.

Mr. Astorino: Yes. Amend everything that you plan on doing. Put your name on the application as the contact attorney. I believe there is a different attorney named on this application. Connie, is that correct?

Connie Sardo: Yes.

Stewart Rosenwasser: Ok.

Connie Sardo: Kirk is also aware that I need the site plan checklist.

Mr. Bollenbach: It is for site plan and special use permit.

Mr. Astorino: Let's get this all cleaned up. Kirk, I know you will be under the gun. Please get as much done as you can on this by Monday.

Kirk Rother: Ok.

Connie Sardo: I need more parts of the application. I have only received the first two pages of the application.

Kirk Rother: Ok. There are more than just a couple of pages.

Mr. Astorino: Does the Board or Professionals have anything else? We will see you Monday night at the 8/24/09 Work Session.

Mr. Bollenbach: Thank you gentlemen.

Stewart Rosenwasser: Thank you.

Kirk Rother: I will have something for Monday night's Work Session. But, it won't be everything.

Mr. Astorino: Ok. Get us what you can.

Kirk Rother: Ok.

4. Planning Board to discuss cancelling the 9/7/09 Work Session and 9/16/09 Planning Board meeting due to the Labor Day Holiday.

Mr. McConnell makes a motion to cancel the 9/7/09 Work Session and the 9/16/09 Planning Board meeting.

Seconded by Mr. Showalter. Motion carried; 4-Ayes.

### **Correspondences:**

1. Letter from the Krebs family, dated 8/11/09 addressed to the Planning Board in regards to the Normajeon Fusco Subdivision.

Mr. Astorino: The Krebs letter was mentioned earlier during the Fusco public hearing. I will also mention that we have that letter in our packets.

2. Pattern For Progress presents The SEQRA Solution Striking the Right Balance Seminar to be held on Thursday, 9/17/09 8 a.m. to 2 p.m. at SUNY New Paltz. If any Board Members are interested in going, please complete the registration form and give the completed registration form to Connie Sardo, Planning Board Secretary, no later than 9/2/09. This conference earns 3-Hours of Credits.

Mr. Astorino: I know myself, I have to get some credits in. I know that there are Board members that have to do the same. Board members, please check on that. I know that Carl Singer's hours of credits are ok.

Mr. McConnell: I believe I have earned my 4 hours of credits. I went to two different things. I know Connie only received one certificate from me. I will check on the other certificate.

Mr. Astorino: Ok. Check on that. Rest of the Board, please see Connie about that.

### **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.

Ed Lennon: The letter that was drafted up regarding the Lands of Pankin, is it the recommendation of the Planning Board that the zoning be changed?

Mr. Astorino: No. It is to leave the zoning as is.

Ed Lennon: It is to leave it as is.

Mr. Astorino: Once Connie files this letter with the Town Board, you could stop at the Planning office with a FOIL request and she will make you a copy of the letter. It is a lengthy letter. Again, I will say to Ted that he had done a good job on this letter. It took extensive review. The letter explains everything.

Ed Lennon: Could I pick it up during the week?

Mr. Astorino: You could pick it up tomorrow.

Connie Sardo: If you could stop by on Friday that would be better.

Ed Lennon: Ok. Would this letter be presented right away?

Mr. Astorino: It will be presented to the Town Board.

Ed Lennon: Would it be discussed at the Town Board's next meeting?

Mr. Astorino: That would be up to the Town Board. We will be giving the letter to the Town Board this week.

Ed Lennon: The discussions that we have been having regarding WWC/Pankin's warehouse buildings, would that be continuing?

Mr. Astorino: It depends. I would imagine that the applicant would wait until the Town Board makes a decision.

Ed Lennon: Ok.

Mr. McConnell: We don't make the decision. We merely make a recommendation.

Mr. Bollenbach: The Planning Board has put WWC/Pankin's application on hold pending outcome of the Town Board's action.

Ed Lennon: Ok. Thank you.

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

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

Seconded by Mr. Showalter. Motion carried; 4-Ayes.