

TOWN OF WARWICK PLANNING BOARD

November 21, 2007

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

The regular meeting of the Town of Warwick Planning Board was held Wednesday, November 21, 2007 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 Peter J. Oprandy, Trust

Application for final approval of a proposed 40-Lot subdivision plus 1-Lot for the well and 1-Lot of open space, entitled “**BCM Development**”, situated on tax parcel S 44 B 1 L 133 formerly part of S 44 B 1 L 50.224; parcel located along the northerly side of NYS Route 17A at the intersections of Ketchum Road and Pumpkin Hill Road, in the SL zone, of the Town of Warwick, County of Orange, State of New York. Preliminary approval was granted on 2/5/05.

Representing the Applicant: Dave Higgins from Lanc & Tully Engineering. Al Lipman, Attorney.

Connie Sardo: Mr. Chairman, I have received the certified mailings for the BCM public hearing.

Mr. Astorino: Thank you.

The following review comments submitted by Tectonic:

Board to discuss SEQR.

2. Applicant to discuss project.

A. Status of approvals

- Orange County Health Department - APPROVED
- NYS Department of Health - APPROVED
- NYS Department of Transportation - APPROVED
- NYS Department of Environmental Conservation - APPROVED

3. Applicant has revised the Stewardship Manual and provided a Homeowner’s Guide. Board to discuss.

4. Applicant’s archaeologist has provided a satisfactory End of Field letter to OPRHP. Applicant and Board to discuss.

5. Providing stub roads to adjacent subdividable lots is not possible due to topography, regulated wetlands, and the presence of environmentally sensitive lands. The applicant requests a waiver. Planning Board to discuss.

6. The *NYSDEC Freshwater Wetland Boundary Validation* stamp on sheet 2 requires DEC Staff signature and P.L.S. seal.

7. Note on the plans that a design for the larger arch culverts proposed for Valley Field Lane and Meadowbrook Lane signed and sealed by a NYSPE and shop drawings must be

submitted for review and approval by the Town Engineer before construction of the culverts or delivery of any of the culvert components may commence.

8. Per revised §A168-10D, testing of the road subgrade and design of the pavement is required.
9. Revise the Road Cross-Section (sheet 12) per revised §A168-11 & 21A, B, D, & E.
10. FOR THE RECORD – The applicant has provided sufficient discussions in both the SWPPP and Stewardship Manual regarding mitigation of road and driveway salt impact.
11. FOR THE RECORD – The applicant has addressed indirect impacts to wetlands to the extent allowed under current NYS regulations and guidelines in both the SWPPP and Stewardship Manual.
12. The label “300’ Bog Turtle Terrestrial Habitat Line” should be made bold on the Landscape Plan. Complete and submit to the Town Planner the Planner’s checklist showing satisfaction of ecological protection requirements.
13. Revise Landscape Plans to Town Planner’s specifications.

BEFORE FINAL APPROVAL:

14. Revise Model Home and Water District Notes per the Planning Board Attorney’s specifications.
15. Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Aquifer Protection Overlay Notes, Stormwater Management Facilities Maintenance Agreement Notes, Open Space Conservation, Homeowner’s Association, Model Home and Water District Notes, Wetland Stewardship Guidelines and Visual Mitigation Notes.
16. Surveyor to certify that iron rods have been set at all property corners and that iron rods or stone cairns have been set at corners of open space, to the Town Engineer’s specification.
17. Town Board to approve Water District and offer of dedication for water facilities.
18. Pay parkland fees.
19. Pay construction inspection fee and performance bond for town roads, stormwater management facilities and erosion control.
20. Pay landscape maintenance bond (three-year term) for screening plantings and hydric plantings at stormwater management facilities.
21. Pay outstanding review fees.

WAIVERS & EXEMPTIONS

<i>CODE</i>	<i>ACTIVITY</i>
§137-18B	Street Layout – provision of stub roads.

The following comment submitted by the Conservation Board, dated 11/21/07:

BCM - The CB makes the recommendation that a meaningful management plan for the open space and critical zones be established prior to further approval. The PB should require that the developer provide adequate accommodation for the public to access the open space area for conservation monitoring and nature observation. In addition, the CB makes the following specific recommendations, based on review of the Draft Stewardship Manual, JTF revs_11_19_07 All parenthetical references are to pages in the redlined draft.

1. Need prohibition on removal of anything (living or dead vegetation, animals and minerals) in protected areas.
2. Homeowners should be required to have septic inspections and tank cleanouts on a periodic basis, e.g., every 3 years, and Town should have authority to enforce this. (Board of Health fine?)
3. Prohibition of pesticides, herbicides, fertilizers should extend to entire property and all common areas, not just lawns. (p.5 and Zone 2 comments on p.7)

4. Monitor must have right to enter private property to monitor and take samples.
5. Monitor must have specific list of tests that are to be conducted annually, e.g., soil sampling, water sampling, etc.
6. Exterior lighting “shall”(p.6 and Zone 2 comments on p.7)
7. Garbage receptacles...”shall be secured by lids at all times to prevent”(p.6 and Zone 2 comments on p.8)
8. Under Bog Turtle Habitat, delete the word “recreational” from the prohibition on motorized vehicles.(p.6)
9. The reference to footpaths should read: “Footpaths may be permitted in this area subject to prior approval and regular monitoring by the Monitor”. (p.7)
10. Use of salt and other ice melting products shall be prohibited on all driveways and walkways. (p.8) This clause should be added also to Critical Terrestrial Habitat section.
11. Use of signs delineating the various zones, (e.g., Vernal Pools, Bog Turtle Habitat, Critical Terrestrial Habitat, Zone 2, NYS Wetlands) should be required with identification and arrows directing the public to be aware of the lines of demarcation. It is recommended that permanent signs, color coded to each zone with corresponding language, be utilized no less than every 100’ along the zone boundaries.
12. The term “monitor” should be a defined term with specific educational and/or practice qualifications. (p.10)
13. The Monitor selection and submission for approval should have a specific timeline, e.g., “The HOA shall submit a list...no later than....”
14. There should be an alternate Monitor and an emergency Monitor i.e., someone who can step in immediately in the event the Monitor is unable or unwilling to perform his services as required.
15. What is the provision for default in fulfilling the obligations of the HOA? There should be an immediate response plan for accidents, emergencies, and violations that homeowners may avail themselves of.
16. There should be signage throughout the development advising homeowners of a telephone number to call in the event of a known or suspected violation of the protection guidelines or encroachment of the zones.
17. The section on Monitoring (p.10) needs to grant the Monitor much greater authority. This section envisions immediate harm to the environment yet only requires remedial action within seven (7) days. The authority should include the obligation to immediately notify the Building Department (including an after hours contact number) and the right to order a stop of work related to the threat until the threat is remedied.
18. The section on Reporting (p.11) needs more detail, e.g., form of report, where report is filed, who receives and reviews reports, public’s right to review reports, etc. This should be consistent with the Monitor requirements in Appendix A.
19. The Town of Warwick Conservation Board should be an included party in all reporting and remediation site visits. (p.11)
20. The phrase “In the event violations are reported to the Town....” should be replaced with “Every violation shall be reported to the Town and the Building Inspector shall arrange....”
21. Where is the Homeowners Guide, referenced in the Stewardship Manual (p.11)? This seems to be a critical aspect of the plan, as most homeowners are not likely to read and remember the details in the Manual.
22. Has Appendix B been revised since 11/01/07? The CB didn’t see any redlined changes.
23. Monitor’s schedule of visits should also include mandatory monthly visits in December, January, February and March for salt monitoring; June and July for fertilizer/herbicides; September for invasive plants; and November for leaf and vegetative debris dumping.

24. An alternative to the use of road salt is needed. A professional opinion on an acceptable alternative is strongly recommended. Alternatives used in other communities include reusable gravel, sand, gravel/ice melt mixture, or natural soil mixed with one of the other items. Perhaps the HOA should be required to order a quantity of a non-toxic ice melt product for such use.
25. Where is the actual provision for street sweeping services? Will this be an HOA function? Private contractor? Town obligation? Where will the sweepings be warehoused? If on site, what is the plan to protect the sweepings from leaching?
26. The CB believes the enforcement and continuity provisions in the manual are inadequate to protect the critical environment in the event of a default. More specific detail is required. There should be a clear set of steps and enforceable provisions for continued maintenance and monitoring of this critical environment in the event the HOA is unable or unwilling to fulfill its obligations. In addition, the CB recommends each deed contain a provision that mandates HOA payments (if not already required) and a specific provision for default that would permit enforcement by the Town. In the event of default, the unpaid dues (or in the event the HOA becomes defunct, a minimum annual payment sufficient to cover reasonable maintenance, monitoring, and remediation expenses) would become a lien on the property so the Town would not be saddled with the added cost of maintaining and monitoring the property.

The following comment submitted by the ARB:

BCM – None Submitted.

Comment #1: Board to discuss SEQR.

Mr. McConnell: The following SEQR has been prepared by Mr. Ted Fink, dated 11/21/07: “This subdivision received Preliminary approval after the Planning Board adopted a Negative Declaration on February 2, 2005. There have been no significant changes proposed for the project since that time that would have the potential to result in a significant adverse impact. Therefore, the Negative Declaration is not in need of amendment. I have prepared a modified Stewardship Manual and this has been circulated by Connie. There may be some minor corrections or edits needed to this Manual before it is complete. For instance, page numbers need to be added and I have not seen any final comments by Planning Board or Conservation Board members. Thus, I suggest that some minor modifications may be made a condition of approval. Other issues have been incorporated into the TECTONIC comments. “

Comment #2: Applicant to discuss project.

A. Status of approvals

- Orange County Health Department - APPROVED
- NYS Department of Health - APPROVED
- NYS Department of Transportation - APPROVED
- NYS Department of Environmental Conservation – APPROVED

Dave Higgins: The proposed project is a subdivision of an existing parcel which has approximately 175 acres. The project is located on the northern side of Route 17A between Ketchum Road and Pumpkin Hill Road. The proposed project is 40-single family residential lots in a cluster subdivision with open space. 39 of the lots are proposed off a road network with a series of cul-de-sacs. The 40th lot would have frontage and driveway access off Ketchum Road. The lots are proposed to be served by a new public water supply system. That water

supply system is proposed to connect into the existing Bellvale Park Water District. The lots would be served by individual sewage disposal systems. We received approvals from the NYS Department of Health for the water supply, and OCHD for the proposed sewage disposal systems. We received the necessary permits from the NYSDEC for wetland crossing and the stormwater management plan. We also received conceptual approval from the NYSDOT for the proposed highway entrance.

Comment #3: Applicant has revised the Stewardship Manual and provided a Homeowner's Guide. Board to discuss.

Mr. Astorino: I know that we have received the new Stewardship Manual. Everyone that I have spoken to has read it. I will go to the Professionals first. Zen, are all your comments incorporated?

Zen Wojcik: All the comments have been incorporated.

Mr. Astorino: I have spoken to Ted and all of his comments have been incorporated. Karen Schneller-McDonalds' comments have been incorporated. Mr. Bollenbach, have your comments been incorporated?

Mr. Bollenbach: No. There are some legal aspects of this that I will be working on with Mr. Lipman. That could be something that could be a condition of the approval. I believe that it is in adequate format right now. We do have Conservation Board comments, dated 11/21/07. This is the first time that I am seeing their comments. They do have about 26 comments. I will take a look at those comments. If there is anything that is relevant, I will discuss that with Mr. Lipman. We do have the basic Stewardship Manual in place. For example; perhaps some timing mechanisms, one is the transition period from the Developer to the HOA. That will have to be incorporated into the HOA documents. Regarding the opens space notes, what are the particular uses that can or can't take place on a particular property? I will be working on that with Mr. Lipman. That is no impediment to the Board in moving forward. That is just like the other declarations or the offers.

Mr. Astorino: Ok. Do any Board members have any comments or concerns on the Stewardship Manual?

Mr. Singer: I would like to wait until you are finished with the rest of the comments before I make comments on the Stewardship Manual.

Mr. Astorino: Ok.

Comment #4: Applicant's archaeologist has provided a satisfactory End of Field letter to OPRHP. Applicant and Board to discuss.

Mr. Astorino: We discussed this at the work session. We have an end of field letter. Ted felt comfortable. Dr. Lindner also reviewed this. Zen, that's the gentleman that went through it with Ted, is that correct?

Zen Wojcik: Yes.

Mr. Astorino: I believe this issue is settled and done satisfactorily.

Zen Wojcik: The Office of Parks Recreation Historic Preservation said that they accept the summary for the end of field. I believe the Board has accepted their ruling.

Mr. Astorino: Ok. I believe so. Do any Board members have any issues with the archaeological aspects of this? (No response.)

Comment #5: Providing stub roads to adjacent subdividable lots is not possible due to topography, regulated wetlands, and the presence of environmentally sensitive lands. The applicant requests a waiver. Planning Board to discuss.

Mr. Astorino: I believe we have discussed this way back when. Does the Board have anything else? I think it is pretty much in common with what we are dealing with here.

Mr. Lipman: Do you have a need to waive a provision in the Regulations?

Mr. Bollenbach: Yes. It is specifically in §137-18B. It is for the Board to consider that it is recommended to have stub roads to consider unless it is precluded by topography or wetland or the nature of the surrounding properties.

Mr. Lipman: No waiver is needed.

Mr. Bollenbach: It is a waiver. Stub roads will not be provided. There are none proposed.

Comment #6: The *NYSDEC Freshwater Wetland Boundary Validation* stamp on sheet 2 requires DEC Staff signature and P.L.S. seal.

Dave Higgins: Will do.

Comment #7: Note on the plans that a design for the larger arch culverts proposed for Valley Field Lane and Meadowbrook Lane signed and sealed by a NYSPE and shop drawings must be submitted for review and approval by the Town Engineer before construction of the culverts or delivery of any of the culvert components may commence.

Dave Higgins: We will add notes.

Comment #8: Per revised §A168-10D, testing of the road subgrade and design of the pavement is required.

Dave Higgins: We have talked about that in the past. That is testing that will be done prior to construction. Any modifications to the road cross section would be determined at that point in time.

Mr. Bollenbach: Zen, should we add to that comment prior to construction?

Zen Wojcik: Yes.

Mr. Bollenbach: We will add to comment #8, prior to construction.

Comment #9: Revise the Road Cross-Section (sheet 12) per revised §A168-11 & 21A, B, D, & E.

Dave Higgins: Right. That will be the functioning of the testing that we just talked about.

Mr. Astorino: Yes.

Comment #10: FOR THE RECORD – The applicant has provided sufficient discussions in both the SWPPP and Stewardship Manual regarding mitigation of road and driveway salt impact.

Comment #11: FOR THE RECORD – The applicant has addressed indirect impacts to wetlands to the extent allowed under current NYS regulations and guidelines in both the SWPPP and Stewardship Manual.

Comment #12: The label “300’ Bog Turtle Terrestrial Habitat Line” should be made bold on the Landscape Plan. Complete and submit to the Town Planner the Planner’s checklist showing satisfaction of ecological protection requirements.

Dave Higgins: I thought we had taken care of that.

Mr. Bollenbach: Let’s leave it on there.

Zen Wojcik: I spoke to Ted about that today. He said that he does not have a completed checklist.

Mr. Astorino: We will leave that comment there. We will take care of that.

Comment #13: Revise Landscape Plans to Town Planner’s specifications.

Dave Higgins: We could do that if Ted has comments on the landscape plans. I thought he was satisfied with that.

Mr. Astorino: I thought so also.

Mr. Bollenbach: I believe it was some minor callouts. It is consistent. That could be a condition.

BEFORE FINAL APPROVAL:

Comment #14: Revise Model Home and Water District Notes per the Planning Board Attorney’s specifications.

Dave Higgins: We could do that.

Mr. Lipman: What does that mean?

Mr. Bollenbach: That is part of the Water District agreement that the applicant has been working on with the Town Board. This is for the timing of the construction of the homes and the development of the infrastructure regarding the Water District, the timing of the Water District expansion, when they could draw building permits, when the C of O could be drawn, and when the facilities have to be installed. We want to have some type of a general note on the map. This note would bring it to everyone’s attention. We will also work that into a declaration format. It would put the perspective purchasers on notice.

Mr. Lipman: I understand that. I am talking about the model home.

Mr. Bollenbach: The model home note is to relate it with the timing of the development or the installation of the water facilities.

Mr. Lipman: The experience that I had recently in the Town suggested that the model home note does not work.

Mr. Bollenbach: It would have to be specifically tailored for this application. We could address that.

Mr. Lipman: Ok.

Comment #15: Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Aquifer Protection Overlay Notes, Stormwater Management Facilities Maintenance Agreement Notes, Open Space Conservation, Homeowner's Association, Model Home and Water District Notes, Wetland Stewardship Guidelines and Visual Mitigation Notes.

Mr. Lipman: It will cost a lot.

Mr. Astorino: John, are you ok with that?

Mr. Bollenbach: We will add to that to Planning Board's specifications.

Comment #16: Surveyor to certify that iron rods have been set at all property corners and that iron rods or stone cairns have been set at corners of open space, to the Town Engineer's specification.

Dave Higgins: Will do.

Mr. McConnell: Is it proper that it is iron rods or stone cairns? I thought that we decided that the stone cairns were what was going to be set at the corners of the open space. We weren't going to have an option of iron rods or stone cairns.

Mr. Astorino: We could go to stone cairns. That would not be a problem. We could ditch iron rods and put stone cairns for the open space.

Dave Higgins: This is at all property corners. The front property corners would not have stone cairns.

Mr. Astorino: No.

Mr. McConnell: I don't have a problem with that.

Mr. Bollenbach: We could let that comment stand as is. It would be to the Town Engineer's specifications. The stone cairns would be placed at all property corners that adjoin the open space.

Mr. McConnell: I knew that we had been in an agreement on it. I just wanted to be sure.

Mr. Bollenbach: Yes.

Comment #17: Town Board to approve Water District and offer of dedication for water facilities.

Mr. Lipman: We have to make the offer.

Mr. Bollenbach: Let's add to that comment; and related infrastructure.

Comment #18: Pay parkland fees.

Mr. Lipman: Yes.

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

Mr. Lipman: Yes.

Comment #20: Pay landscape maintenance bond (three-year term) for screening plantings and hydric plantings at stormwater management facilities.

Mr. Lipman: Yes.

Comment #21: Pay outstanding review fees.

Mr. Lipman: Yes.

WAIVERS & EXEMPTIONS

<i>CODE</i>	<i>ACTIVITY</i>
§137-18B	Street Layout – provision of stub roads.

Mr. Singer: Before we open this up to the public, I want to say that my computer has not been working the last few days. I did not get the Stewardship Manual. I am looking at the final revisions of that manual tonight. What I am about to say maybe included in it, but just in case they are not, I wanted to express myself.

Mr. Bollenbach: I want to state for the record that these are not final revisions by any means. I would definitely let the Board peruse any documents as they progress.

Mr. Singer: Thank you. I want to say how bad I feel that this application has been before the Board for 5 or 6 years. I think that it is outlandish that a Board takes that long. I think in the future, we should do everything in our power to approve or disapprove an application in a lot less time. It has come to my attention that part of the problem and not all the problem was that each time we asked the applicant to do one, two, or three things; he came back doing one or two, but not the third thing. We had to go back again and again. It is partially his fault among other problems. I want to thank the applicant for letting us dig (2) wells on his property and supplying municipal wells for the neighboring property as well as his. That was a very generous gesture. Also, the applicant has agreed to treat this property as being in the Ridgeline Overlay District even though it is not. That will cost him several thousand dollars more. It would improve the

vision of this property from the scenic highway Route 17A. We appreciate that. On the other side of the coin, I am a little upset with the applicant that several times during this process for 2 or 3 years, I have asked the applicant on who is going to own the open space and who is going to monitor the open space. For 2 or 3 years, the applicant has told us that O.C. Land Trust will take time and do the monitoring. After I communicated with O.C. Land Trust, they told me that no such thing has taken place and they do not intend to take title and they don't want to have anything to do with the monitoring. I was disappointed that for 2 or 3 years, we are hearing one thing from the applicant and we hear something else from O.C. Land Trust. As recent as last week at our work session, I asked the applicant once again, about the third time, on who was going to monitor the open space. Now, he tells me that Michael Klemens is going to monitor the open space. Yesterday, I called Michael Klemens. He told me that no way would he monitor the open space and no way has he agreed to it or if there was any agreement. He stated that he was too busy in his new job. He wants nothing to do with it. I am apprehensive about what the applicant says and what is fact. If we are going to approve this tonight, I would like a condition of approval to be that a monitor is appointed and approved by a committee or the Board of the Town and that the Board of the Town sees the contract between the applicant and the monitor. I think that should be a condition of the approval. Ben had told me that it is already in the Stewardship plan. If it is, I am happy with that.

Mr. Bollenbach: That was one of my additional comments that I was going to raise. I was going to add that as an additional condition of the maps being signed.

Mr. Astorino: As Carl had pointed out; it has been the Board's position all along.

Mr. Bollenbach: Yes.

Mr. Astorino: As far as naming a name; Dr. Klemens for an example, I don't think anyone up here would kid themselves that Dr. Klemens would be around forever. Whether it is him or someone else capable, that is where we would have to be with this.

Mr. Singer: I would agree with you except that when I brought up this topic at the work session, I was told by one of our Professionals that the Warwick Conservancy Board, which is a Board that doesn't exist at the moment will approve according to a certain criteria the monitor of this project.

Mr. Astorino: That is not in the Stewardship Manual. It is the applicant and the Town Board. We could tweak that to what the Town Board deems they want to approve as the criteria for this monitor. That has to be done before anything happens on that property. That contract and monitor would have to be in place before that.

Mr. Singer: Does that have to be approved by the Town Board?

Mr. Bollenbach: No. What I am suggesting, the first monitor, before the maps get signed that we know who the monitor is that is proposed. I will present it to the Planning Board for the Board to say either yes or no. If the Planning Board says yes, the applicant will provide a one-year employment contract. Once that condition is satisfied, then the maps could be signed. After that, once that is in place that would be something that would be discussed and taken up with the Town Board and the Building Department. They will be the ones that would be receiving these annual reports to see how everything is working. I think it is for the initial phase for the Planning Board to approve its part of the initial approval. As things go along, it is

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perhaps more in the prevue of the Town Board or the Building Department for the enforcement portion of it, which I believe the monitor is for enforcement mechanism.

Mr. Singer: I am happy with that.

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

Thomas Latorre: I live on Ketchum Road. I border the BCM project. One of the things that I wanted to ask the Board is that I could not help but notice that BCM went through (3) Archeologist firms to get a final report submitted. Does the Board get to see all (3) reports.

Mr. Astorino: We did. It is in the file.

Thomas Latorre: Were all the findings the same by all (3) Boards. Why go through (3) Boards?

Mr. Bollenbach: They weren't completed. It was done in phases. One archeologist did a portion of it. The applicant decided to seek the advice of additional archeologists to continue the study. The final was just completed and signed off by the State.

Mr. Astorino: We have the end of field letter.

Mr. Bollenbach: It was reviewed by our Professionals and his Professionals.

Mr. McConnell: I saw nothing in any of the reports that was contradictory one to the other, which would give you some cause to believe that there was some shopping going on there. That was not the case at all.

Thomas Latorre: It seemed that way to me. All (3) reports were read. The first report was from BTK, then LaPorta, and now Hatrgen.

Mr. Astorino: Everything is in the file. All of those reports are in the BCM file. They have been there from day one.

Mr. Singer: Ben, I would like to correct you. Mr. LaPorta's report, which he was supposed to send, we never received that.

Mr. Astorino: I can't control what the applicant does with their Professionals. What his Professionals had done at that time are in the file. Whether he was terminated or left, I don't know. Our goal as a Planning Board is to meet our SEQR requirements. I believe we had done that. We had done that with the end of field letter, the letter from Doug Mackey. This Board had even gone a step further by having Ted get Dr. Lindner to review everything on an additional level.

Thomas Latorre: Would it be an unreasonable request to ask the Board to request a final report from Mr. LaPorta to see if it is in an agreement?

Mr. Astorino: I think that would be unreasonable. That is my opinion. I think that we have sign-off from the State. It is ultimately this Board's decision to review these documents. We went above and beyond by outsourcing Dr. Lindner through Ted Fink's office to review everything on another note. That is another archeologist that was also involved in this. Quite frankly, I believe they have done that.

Thomas Latorre: Ok. Recently the Planning Board had a joint meeting with the ARB as well as with the Planners for the Fairgrounds project. I thought that was a very productive meeting where the actual builder sat down with the ARB and reviewed their plans. I think at one time BCM brought in a proposed sketching of what the buildings would look like.

Mr. Astorino: They brought in numerous ones at the preliminary stage.

Thomas Latorre: Would they be willing to work with the ARB?

Mr. Astorino: I believe that the ARB has access to that file. They could review those schematics, which I believe this Board has told them. I haven't heard anything different. If there is a correspondence at the building permit stage and they like some input, I am sure that it would be open.

Thomas Latorre: You as chair of the Planning Board, would that be something you would look favorably upon to encourage the ARB to be involved like it is with the Fairgrounds project?

Mr. Astorino: At this stage of the game, if the ARB has some comments, they could submit them to the applicant. I think it would have been much easier if the project were a little earlier on. I don't think their houses are set in stone. Tony, correct me if I am wrong, but I think there are (4) or (5) different schematics in the file. I do not recall everyone. I am sure the ARB has the ability to go there and take a look at them and comment back to us or to the applicant.

Mr. Bollenbach: It would be to the applicant. The Board has already received enough information.

Mr. Astorino: We looked at them and made our decision that they would fit in with the community character.

Thomas Latorre: Ok. I have one other concern that I want to have on public record. I think a HOA cannot be an effective entity to monitor the open space.

Mr. Astorino: They are not. They are hiring the monitor to be effective to monitor the open space. We just pointed out that monitor would get hired and would have to get the Planning Board and Town Board's approval. If he is not doing his job, the Town Board has the right to hire their own monitor and bill the residents. In the beginning of construction, it would be the developer. No matter what, there are safe guards in place here, which Mr. Singer had pointed out very eloquently that we want in place. It has been that way from the beginning.

Thomas Latorre: On a list of your checklist of comments, at one of the earlier meetings more than a year ago, we had talked about in the open space area behind lots 5, 6, and 7. I had at one time written a letter that there seemed to be an illegal dump or dump site along that area of lots 5, 6, and 7. BCM said that they would clean that up as part of their process of building. I don't see that on the checklist anymore.

Zen Wojcik: Mr. Chairman, I think that was incorporated in the Negative Declaration.

Mr. Astorino: I believe so. I believe that was handled during preliminary. That is already in the Negative Declaration.

Thomas Latorre: It says that it would be cleaned up.

Mr. Astorino: Yes.

Thomas Latorre: Ok. Thank you.

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

Todd Vogel: I would like to add a little bit to Mr. Singer's point about the Stewardship Document. We received a so called final version on Tuesday. We reviewed it as quickly and completely as we could in the time allowed which was not a whole lot.

Mr. Astorino: So did we.

Todd Vogel: We came up with approximately (26) items. Some of which were minor. Most of which had to do with the monitoring aspect of things. One of our prime worries is that the HOA is only as strong as it is. If it chooses not to meet, it doesn't meet. I do not see in the Stewardship Document anything that the Town could take over that process.

Mr. Astorino: It sure does.

Todd Vogel: Where?

Mr. Astorino: That was one of the points we made at the work session. Mr. Bollenbach made that point and discussed it at the work session in depth. If this monitor and HOA fails, breaks apart, or whatever, the Town has the absolute right to come in and hire a monitor and bill the residents.

Todd Vogel: What page is that on in here?

Mr. Bollenbach: I don't know what page it is on. In general terms, we have provisions for the open space conservation. It is in comment #15. There would also be a Drainage District that will be formed. The Drainage District includes the wetlands. There is a District mechanism that will be put into place. This is just like all other open space easements that we have.

Todd Vogel: Right. Except in this particular case...

Mr. Bollenbach: I am talking about the mechanism for enforcement.

Mr. Showalter: Todd, it is on page 9.

Zen Wojcik: It is on page 9 and 12.

Todd Vogel: Ok. There is another point I would like to make. We had seen bits and pieces of previous documents that the use of salt on the roads and driveways was originally prohibited.

Mr. Astorino: No. That was not the case. We discussed it. We worked out a system. It is a Town road. It will be a Town dedicated road. When they plow the roads, over the bridge area a sign could be installed that says; stop no salt allowed. That was Zen's point. On the other portions of the road, a salt mix would be used. The applicant/HOA would have to sweep after a storm event to clean that up. I believe that is an effective mechanism to control safety.

Mr. Bollenbach: There is no outright prohibition on salt. It is that salt should be minimized. In one of the prior drafts is said, yes that there should be no salt. That is not consistent with the SEQR process. The wetland studies that we had stated there would be buffering areas for the sweeping. The streets would be swept on a weekly basis during construction. After every snow event, it would be swept. That is to minimize the salt impact. It is non-sequitur to say that salt is prohibited. It is for a basic traffic safety concern of intersections or what have you.

Todd Vogel: I understand the safety concerns. One of our points is that alternatives to salt be considered. There are some. They might not be cheap.

Mr. Astorino: Or, as effective. The alternatives that are out there are few and far in between. I have been to several meetings on that. The problem is the effectiveness. It's Mr. Bollenbach's point exactly, road intersections, and road safety. You have to have the safety of the community in mind. That was why we went to the route of sweeping. You have to be realistic. All of the roads in the Town of Warwick now get a coating of a sand/salt mix when it snows. They got that the other night.

Todd Vogel: Right. I am grateful for it.

Mr. Astorino: We have to be realistic. As John had pointed out, salt is not prohibited. We would have to minimize it to the greatest extent practical. I believe the Board has done that.

Mr. McConnell: It would also be different if these were private roads. This is a Town road.

Todd Vogel: Does it need to be a Town road? Why are we making it a Town road if this is such a sensitive area?

Mr. Bollenbach: This is in the subdivision regulations. It has been addressed under SEQR. It is proposed as a Town road. That is the proposal. They have met the criteria. It was also presented to the DEC that way.

Todd Vogel: Ok. Thank you.

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

Steve Carras: I am standing in for Dan Duthie the Chairman of the Conservation Board.

Mr. Astorino: Are you speaking on behalf of the CB?

Steve Carras: Yes. I did want to reiterate that unfortunately that we received the redline draft so late, we did not have much time. We put down in the comments...

Mr. Astorino: You also received the clean draft.

Steve Carras: Right. It is kind of hard to work with a clean draft when there have been so many revisions.

Mr. Astorino: The Board received the same thing.

Mr. Bollenbach: Give it a fresh read.

Steve Carras: I have read them both as late as 3 hours ago.

Mr. Astorino: That was the same with us.

Steve Carras: I received an email from Ted. He sent me the latest version. What I would ask of the Planning Board's Attorney, if you would suggest that our comments be shared with the Board. We would certainly invite some feedback if there were questions about these items. It is not typical for us to put (26) items on a comment sheet. However, this is an atypical project. There are a lot of conservation issues that we are concerned about.

Mr. Astorino: We have them. We will take a look at them.

Steve Carras: What I understood was that Mr. Bollenbach said he would discuss them with Alan Lipman. I think the Board would be involved in discussing these recommendations.

Mr. Astorino: The final draft of the Stewardship Manual, we will see it.

Steve Carras: I understand that the Board will see the final draft. What I am hoping is that the Board will take the time to read the CB comments.

Mr. Astorino: We have them. We have read it.

Mr. McConnell: We each have them.

Steve Carras: There is one other item. I am following up on a question that Mr. Latorre had raised about the archeological issue. Maybe, I missed a step along the line. It seems to me the last that we had seen was a report dated June 19th. It was a letter written to the Chairman. One of the things that it recommended was continuing the Phase 2 archeological work. I don't know if the new archeologist had done a Phase 2.

Mr. Astorino: Steve, all I could tell you is that I know everything that we had received the CB received. Connie is very good about doing that. Even if the CB wants to pull the file, it is there.

Steve Carras: Right. That is not my question. My question is to the applicant. That is not my place to ask. I am asking the Board if the applicant in the employment of their 3rd archeologist, has the archeologist follow the recommendations of the 2nd archeologist?

Mr. Astorino: They followed the recommendation of the State. I believe that we had done a Phase 2. We have the end of field letter.

Steve Carras: I know that there was an end of field letter. I did see that.

Mr. Singer: Could we ask Zen if they had done a Phase 2?

Zen Wojcik: They had done a Phase 2. The end of field was actually for a Phase 3. You cannot hopscotch from a Phase 1 to a Phase 3. You would have to do a Phase 2. Everything was consistent all the way down the line.

Mr. Astorino: If the Board asked for a Phase 2, it was done.

Steve Carras: Ok.

Mr. Astorino: I am not quite sure whether LaPorta makes a decision for the applicant or this Board. He was hired by the applicant at one point. Whatever happened between A and B, he is not there. This archeologist that they had hired (Hartgen), completed the work that had to be sufficient. It was also reviewed by Dr. Lindner that Ted Fink had hired. It gave this Board a little more security.

Steve Carras: I just wanted clarification. At the June 20th meeting where this LaPorta letter was read or presented, it said things like we wouldn't be able to complete this for another (90) days, etc...

Mr. McConnell: Steve, is that the last thing you have?

Steve Carras: That is the last thing that I have from LaPorta.

Mr. McConnell: Ok. Do you have anything from Hartgen?

Steve Carras: No.

Mr. McConnell: Then, you need to go to the file.

Connie Sardo: Not only have I given out the hard copies, I have also emailed them.

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

John Mastropierro: I live on Route 17A. Was I supposed to get a registered letter?

Mr. Astorino: Yes.

John Mastropierro: I did not.

Mr. Astorino: Connie, check the mailing receipts. You are here. You found out about it.

John Mastropierro: Yes. I was told. I would have liked to take this day off. I was listening to this archeological report. The reason that I came here was because of that. It seems very suspicious to me that (3) firms were hired until they finally got the right answer.

Mr. Astorino: We hired a firm to review those three.

John Mastropierro: It doesn't sound too good. I don't know if all the reports are really as transparent as would be lead to believe.

Mr. Astorino: I could say that the State, end of field letter, and the sign-off by Doug Mackey...

Connie Sardo: I have checked the mailings and it says that you received a letter. I have the register mailings.

John Mastropierro: I did not receive a letter.

Mr. Bollenbach: We have the certified mailings.

John Mastropierro: I never signed for anything.

Mr. Bollenbach: It is not a signed receipt. It is just a certification of mailing that it was mailed.

John Mastropierro: When was I supposed to get it?

Connie Sardo: You were supposed to get it (5) days before the meeting.

Mr. Astorino: What is the date on those mailings?

Connie Sardo: It is dated 11/16/07.

Mr. Astorino: The bottom line is that you are here.

John Mastropierro: It just seems suspicious to me that from the very beginning that BCM was coming up with a wetland that was different from a wetland study; that's that was the size of it. In the very beginning, I was having an engineer look at it with somebody else.

Mr. Astorino: Do you mean the size of the wetland?

John Mastropierro: The size of the wetland was different from the original BCM.

Mr. Astorino: That has been delineated.

John Mastropierro: It has been delineated now. It seems to me that we were forced to bring in our engineer. The wetlands had changed. BCM had adjusted their wetlands to agree with the engineers that we had. When the engineer was forced off, the rest of the wetlands for some reason did not change in size. That seems strange to me.

Mr. Astorino: It seems to me when this went to the DEC and the ACOE that they didn't raise a flag to us, the Lead Agency on this project, that the wetlands are not correct.

John Mastropierro: BCM made the adjustment.

Mr. Astorino: The State has to review that adjustment. You can't just take a map and say that you are going to shift the wetlands.

Mr. Bollenbach: Ben, Karen Schneller-McDonald also verified the wetlands.

Mr. Astorino: This was also all handled in the Negative Declaration under SEQR.

John Mastropierro: It just smells a little bit. It is the same thing with the archeological report.

Mr. Astorino: Again, I will go to the point of and I don't know what you call smells bad; but when outside agencies, DEC, ACOE, Karen Schneller- McDonald..., as we have discussed during the preliminary approval before the Negative Declaration was issued that met the SEQR requirements...I find it very difficult to believe that the wetlands have changed or moved.

John Mastropierro: I still think there is a problem with a portion of the wetland. I realize that a long time ago that kind of slipped to the side. I still don't like the idea of the archeological report. I am not sure that we are seeing everything.

Mr. Astorino: I suggest you take a look at the file. FOIL everything that you want. Everything is in there. All of the phases are in there. Whether they hired a different archeologist or not, it is immaterial to us. We cannot force them to use a certain archeologist. We have to review the material that comes in to us. We went a step further than that. We had Ted Fink get Dr. Lindner to review it totally out of the loop of everyone here. We received his comments. We through his comments back to the applicant. The final product of this is the End of Field sign off from the State. The Board and I feel comfortable that we went above and beyond to make sure that it was done correctly.

Mr. McConnell: We also had the benefit of being at every meeting and every work session where the applicant came to us and told us about the progress with the archeologist. He told us about his intention to hire a new archeologist. I was comfortable with the reasons given as to why a new archeologist was being hired. Then, Dr. Lindner and the State had signed off on it. We are not that much different from you that, in the abstract or in a vacuum, (3) different archeologists wouldn't raise some questions with us. We had the benefit of sitting on every meeting and seeing all the correspondences that was there. We felt comfortable with it. You are welcomed to FOIL all that information. Perhaps, you would be comfortable with it to. But, to stand there and say that it doesn't smell good to you, my suggestion would be to get all of the information. We have seen all the information.

Mr. Showalter: We have seen actual samples that were found in previous digs and on the property involved. Chert was found. We learned about a lot of interesting stuff.

John Mastropierro: I just don't understand why 3-archeologists.

Mr. Astorino: I will say it again. We can't control who the applicant hires. What we can control is that it is done correctly and that it follows SEQR. That is what we intend to do. Do you have anything further?

John Mastropierro: I just don't understand it. I have been attending these things. It almost seems like 2 weeks ago we were going to have a meeting, then it was postponed to the night before Thanksgiving.

Mr. Astorino: Because we did not have the information. This Board now as in the past does not hesitate to bump an applicant, whether it is BCM or anyone else that comes in that work session and doesn't have their material. I don't care what day it is or if it is the day before Thanksgiving. Our Board members are here. We notified it in the paper. It was a scheduled meeting back from January 2007. The meeting was going to be on that date. The Board made a decision to have it that date. We would have had the meeting that earlier date, but the applicant wasn't ready. I have no problem in bumping an applicant off.

John Mastropierro: Is the Board is willing to pass this without having all of the points?

Mr. Astorino: What points?

John Mastropierro: I don't know how many points are on here.

Mr. Astorino: As every other application that goes through the Board, there are numerous conditions of final approval before that map gets signed. As Mr. Singer had pointed out, this application has been here for almost 6 years.

John Mastropierro: I agree with Mr. Singer. It should be a much shorter process.

Mr. Astorino: I agree to. It has been a long process. Every applicant that goes through this Town goes through the same process. We work through every issue that we have to in order to get to this point.

John Mastropierro: Could you explain to me the difference between a 300' and 100' buffer? I understand that the 100' buffer, you can't do anything in there. What is the 300' buffer?

Zen Wojcik: That is part of the bog turtle plan that Professor Klemens came up with.

John Mastropierro: Yes. But, are there houses within that area?

Mr. Bollenbach: Yes. There are specific limitations.

Zen Wojcik: There are limitations. The 100-foot buffer that is a State DEC regulation. Professor Klemens had his Bog Turtle Recovery Plan. He recommended a 300-foot buffer where certain activities couldn't take place because of the moving around of the bog turtles. That is why there is a 300-foot buffer as well. It is very regulated. There is a section about it in the Stewardship Manual, about what you can or cannot do in that area.

John Mastropierro: How are we able to enforce those regulations within that 300 buffer?

Mr. Astorino: As in the Stewardship Manual...

John Mastropierro: I am talking about fertilizer going down on lawns and stuff like that. I understand that is a no-no.

Mr. Astorino: As of now, that is being farmed with some corn and hay. Is that correct?

John Mastropierro: Yes.

Mr. Astorino: We use fertilize on it right now. The use of fertilizer is limited in the Stewardship manual. The use that property is undertaking as of right now with the amount of fertilizer and chemicals being sprayed on corn and the hay ground, I am sure, far exceeds whatever would go on the lawn. The Manual does limit the use of pesticides, fertilizer, herbicides, etc...

John Mastropierro: I am still not happy with the archeological thing. Thank you.

Mr. Astorino: It is in the file. Is there anyone else wishing to address the BCM application?

Penny Steyer: I am a member of the ARB. I want to put Mr. Latorre's concern to rest. We will pull the schematics that Connie has in the files. At our next meeting, we will review them. We will make ourselves available to the applicant proactively to work with them as they go through the process.

Mr. Astorino: Those came in about 4 years ago. They are in the file.

Penny Steyer: We will pull them. We will do whatever we can. We will be happy to be proactive.

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

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

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

Mr. McConnell makes a motion to grant a waiver of §137-18B street layout – provision of stub roads.

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

Mr. Showalter makes a motion on the Peter J. Oprandy, Trust application, granting final approval for a proposed 40-Lot subdivision plus 1-Lot for the well and 1-Lot of open space, entitled **“BCM Development”**, situated on tax parcel S 44 B 1 L 133 formerly part of S 44 B 1 L 50.224; parcel located along the northerly side of NYS Route 17A at the intersections of Ketchum Road and Pumpkin Hill Road, in the SL zone, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. The *NYSDEC Freshwater Wetland Boundary Validation* stamp on sheet 2 requires DEC Staff signature and P.L.S. seal.
2. Note on the plans that a design for the larger arch culverts proposed for Valley Field Lane and Meadowbrook Lane signed and sealed by a NYSPE and shop drawings must be submitted for review and approval by the Town Engineer before construction of the culverts or delivery of any of the culvert components may commence.
3. Per revised §A168-10D, testing of the road sub-grade and design of the pavement is required prior to construction.
4. Revise the Road Cross-Section (sheet 12) per revised §A168-11 & 21A, B, D, & E.
5. The label “300' Bog Turtle Terrestrial Habitat Line” should be made bold on the Landscape Plan. Complete and submit to the Town Planner the Planner's checklist showing satisfaction of ecological protection requirements.
6. Revise Landscape Plans to Town Planner's specifications.
7. Revise Model Home and Water District Notes per the Planning Board Attorney's specifications.
8. Provide the declaration and the recording information on the plan for Agricultural Protection Notes, Aquifer Protection Overlay Notes, Stormwater Management Facilities Maintenance Agreement Notes, Open Space Conservation, Homeowner's Association, Model Home and Water District Notes, Wetland Stewardship Guidelines and Visual Mitigation Notes to Planning Board Attorney's specifications.

9. Surveyor to certify that iron rods have been set at all property corners and that iron rods or stone cairns have been set at corners of open space, to the Town Engineer's specification.
10. Town Board to approve Water and Drainage Districts and Offers of Dedication for Water Facilities and Infrastructure Improvements.
11. Applicant to propose an Open Space Monitor for Planning Board Approval along with a One Year Employment Contract.
12. Pay Parkland Fees.
13. Pay Construction Inspection Fee and Performance Bond for Town Roads, Stormwater Management Facilities, and Erosion Control.
14. Pay Landscape Maintenance Bond (three-year term) for screening plantings and hydric plantings at stormwater management facilities.
15. Pay Outstanding Review Fees.

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

Dave Higgins: Thank you.

PUBLIC HEARING of Black Meadow Club

Application for site plan approval for the construction and use of a 5-foot high chain link fence running a total of 4100 feet and clearing over ¼-acre in the Ridgeline Protection Overlay District, situated on tax parcels S 23 B 1 L 2 and S 23 B 1 L 30; project located on the eastern side Black Meadow Road 3600 feet north of East Ridge Road, in the LC/RU zones, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the 9/19/07 Planning Board meeting.

Representing the applicant: Michelle Babcock from Jacobowitz & Gubits. Ed Marron from Black Meadow Club. James Clearwater, Surveyor from MJS Engineering.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
 - A. Board and applicant to discuss inconsistencies between Site Investigation & Report and plans.
2. Applicant to discuss project.
 - A. Status of legal proceedings.
3. Applicant has cleared approximately 0.8 Acres of trees and vegetation on their property along a portion of their boundary for the purpose of constructing a fence. The site is located in the Ridgeline Overlay District where permission from the Planning Board is required for clearing in excess of 0.25 Acres.
 - A. Plan shows fence to be constructed in two sections, A & B. Fence Section A is shown as the entire fence along the non-disputed boundary while Fence Section B is the entire fence along the disputed boundary. Board and applicant to discuss.
 - B. Applicant proposes mitigation plantings along the face of the fence in the portion closest to Silvertail Road, as noted on drawing C-2. Board and applicant to discuss.
 - C. Applicant has complied with most of the requirements for a Timber Harvest Permit per §164-47.1F(3)(c)[2][a] by providing information and notes on the plans. Provide the number of trees to be cut on the plans.
 - D. Label existing unpaved access road on drawing C-2.
4. Applicant shall obtain all building department permits for tree clearing and fence construction.

BEFORE FINAL APPROVAL:

5. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes. Note the recordation date and provide a copy of the recording receipt to the Planning Board Attorney.
6. Pay performance bond and construction inspection fee for tree clearing and mitigation landscaping.
7. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 11/21/07:

Black Meadow Club - CB recommends the applicant alternate seedling plantings with more mature plantings to more effectively mitigate the loss of the original trees and vegetation as well as to provide screening. If the PB permits all seedlings, annual surveys by the Town should be conducted (CB would be willing to do site visits) for at least 5 years with applicant agreeing to bear cost of replacement of all dead plantings. In addition, CB recommends bottom of fence be

The following comment submitted by the ARB:

Black Meadow Club – None submitted.

Comment #1: Board to discuss SEQR.

1. Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 11/21/07: “SEQR issues associated with this application include the potential for impact on wildlife movements, aesthetics (Ridgeline Overlay District), and community character. Robert G. Torgersen prepared a “Proposed Partial Boundary Fence Site Investigation and Report” dated October 26, 2007. I have reviewed this report and prepared a Memorandum dated November 16, 2007 with a number of questions that need to be answered before any SEQR action can be taken on this application. Also, Garling Associates has submitted a letter dated 11/20/07 to the Planning Board expressing concerns with wildlife movements as well. Some reasonable mitigation that could be explored includes some breaks in the fencing (since even a five foot fence may prevent deer movements according to DEC biologists), raising the fence in some areas of high wildlife movements to allow turtle and small mammal passage under the fence, and use of alternative fence materials in selective locations where security against ATV’s may be less of a concern.”

Michelle Babcock: We would like to get a copy of Ted’s memo, dated 11/16/07.

Mr. Astorino: You could get a copy of that.

Michelle Babcock: We are prepared to address his comments. He had provided those comments verbally during the work session.

Mr. Astorino: Not a problem.

- A. Board and applicant to discuss inconsistencies between Site Investigation & Report and plans.

Zen Wojcik: That was what Ted was referring to in Torgersen’s report.

Mr. Astorino: Ok. That was the issue regarding Torgersen’s report. It had some inconsistencies.

Michelle Babcock: We were prepared to address those tonight.

Zen Wojcik: Mr. Chairman, at the work session, I think Ted was referring to specific inconsistencies like the color of the fence and some other items. He has elaborated upon this now because he has contacted people at the DEC. He went into depth on things. It was inconsistent within the Torgersen’s report.

Mr. Bollenbach: I thought the applicant was going to discuss this directly with Ted so that it could be resolved tonight. Apparently, it is not.

Michelle Babcock: We attempted to contact Ted several times. He has not returned our calls.

Connie Sardo: Did he send you a letter, dated 11/16/07? That was last Friday. He did not send me anything on that date.

Mr. Astorino: I think the way we left it on the phone that evening at the work session was that there was going to be some contact made. That did not happen.

Connie Sardo: We need to talk to Ted.

Mr. Astorino: We have to get Ted to clear that up.

Michelle Babcock: We have attempted to do that. We have gone ahead to revise the plans.

Mr. Astorino: Ok. We will have to get them to Ted for him to review. Zen, give Ted a call.

Mr. Singer: While we are here, what are the responses to the comments now?

Mr. Astorino: You are welcomed to do that. I don't know if it would do any good because we would not have Ted's input. I think it would be more relevant to have Ted with us for that.

Michelle Babcock: Does anybody here have a copy of Ted's memo, dated 11/16/07?

Zen Wojcik: No. I have a feeling that he had mistaken the date on that.

Connie Sardo: I have not received anything from Ted.

Michelle Babcock: I have my notes from the work session. If you want to work from there so that we could bring the Board up to speed, we could do that.

Mr. Astorino: You are more than welcome to discuss what you have. But, no matter what, if you have updated revised plans, they would get resubmitted and sent to Ted. Hopefully, Ted will be at the next work session. We will go from there.

Mr. McConnell: I think the consensus is that Ted is referring to a November 16th memorandum. I don't believe anybody has received that memo. He may have had difficulties with his emails going out.

Mr. Astorino: I never received it.

Mr. McConnell: Zen said that has happened in the past.

Zen Wojcik: We will clarify the date of the memo. We had spoken today. Ted did cite those concerns.

Mr. Astorino: It will have to be reviewed. We will go from there.

Comment #2: Applicant to discuss project.

A.) Status of legal proceedings.

Mr. Astorino: We know about the project. What is the status of the legal proceedings?

Michelle Babcock: There is no new progress to report.

Comment #3: Applicant has cleared approximately 0.8 Acres of trees and vegetation on their property along a portion of their boundary for the purpose of constructing a fence. The site is located in the Ridgeline Overlay District where permission from the Planning Board is required for clearing in excess of 0.25 Acres.

A. Plan shows fence to be constructed in two sections, A & B. Fence Section A is shown as the entire fence along the non-disputed boundary while Fence Section B is the entire fence along the disputed boundary. Board and applicant to discuss.

Mr. Astorino: We went through this before.

Zen Wojcik: At the work session, we decided to have this on for the record for the Board to decide whether it was going to approve the fence along the entire boundary.

Mr. Astorino: John that would be a legal question for you regarding the fence along the disputed section.

Mr. Bollenbach: On the disputed section, what they would be looking for is permission from the Board to put it in the non-disputed portion of the property. In the event it is resolved by the courts, then the Board could approve a new location.

Mr. Astorino: Then, they would not have to come back.

Mr. Bollenbach: That is what I am looking for. If the fence is in one location or another and the disputed area is minimum... I don't know what it is going to be. If it is in that particular area, if it is on the applicant's property, they have the right to put the fence on. That is what they are approving.

Zen Wojcik: It is shown on the plan.

Mr. Bollenbach: It is shown? It is demonstrated.

Mr. McConnell: It seems that it is shown on the plan, but if the legal proceeding was to go against Black Meadow Club, it occurs to me that they might have to change the plan in terms of where the fence would go. I think it would be more appropriate to consider the fence, Section A at this point and wait until after. Otherwise, if we approve it for Section B and the court says you are wrong and others are right...

Mr. Bollenbach: There are different mechanisms that we could utilize. The applicant would have to get a building permit anyhow. Along with that would be the court's determination for wherever that fence is located. That is if the Board feels comfortable with it. It will still be the same fence type and the same installation procedure.

Mr. McConnell: It might require more clearing. That is a concern that I have.

Mr. Bollenbach: We could put some notes on it that it could be something that requires additional clearing and they would have to come back to the Board.

Mr. McConnell: All right.

- B. Applicant proposes mitigation plantings along the face of the fence in the portion closest to Silvertail Road, as noted on drawing C-2. Board and applicant to discuss.

Mr. Astorino: We discussed some of this at the work session. You said that you were going to put seedlings in.

Ed Marron: The Board was not blown away by that.

Mr. Astorino: Exactly.

Ed Marron: We have addressed that. I will let Jim discuss it better in detail. We decided that it would be better to move the fence 10 feet back from the property line facing Silvertail Road. We would plant Norway Spruce along the entire fence line as it fronts Silvertail Road.

Mr. Astorino: What size?

Ed Marron: 3 or 4 feet. In between those we would plant, for the first 275 feet where visible from the road, a small juniper.

Mr. Astorino: Ok.

Mr. Singer: I like that.

- C. Applicant has complied with most of the requirements for a Timber Harvest Permit per §164-47.1F(3)(c)[2][a] by providing information and notes on the plans. Provide the number of trees to be cut on the plans.

Mr. Astorino: Zen, is that all we need on that is a number?

Zen Wojcik: Yes.

Ed Marron: I would ask when we come back for the second section that we will tell you what will be cut. When we know the course of the second section of the fence, we would be able to tell you then.

Mr. Astorino: Do you want to come back?

Michelle Babcock: No. We are not looking to come back. We are looking to use the discretion of the Timber Harvest. If we exceed ¼ acre, it could either come through this Board or the Building Inspector.

Mr. Astorino: That would be something you would have to work out with John on the legal end of it.

D. Label existing unpaved access road on drawing C-2.

Ed Marron: We have done that.

Comment #4: Applicant shall obtain all building department permits for tree clearing and fence construction.

Ed Marron: Fine.

BEFORE FINAL APPROVAL:

Comment #5: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes. Note the recordation date and provide a copy of the recording receipt to the Planning Board Attorney.

Michelle Babcock: Ok.

Comment #6: Pay performance bond and construction inspection fee for tree clearing and mitigation landscaping.

Ed Marron: That is acceptable.

Comment #7: Pay outstanding review fees.

Ed Marron: That is acceptable.

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

Luigi Marinucci: I am the owner of lot 8W in Hambletonian Hills. My property adjoins the Black Meadow Club, which is used for hunting. I am here to express my anger at the action that was deliberately taken by this Club. It is an action that was clearly illegal. What has happened was the clear cut of trees in an area about 8/10 of an acre. Most of that adjoins my property. This action should have been done with prior permission by this Board because you are talking about a Ridgeline Overlay District. The second issue is that some of the trees that were cut were on my property. Clearly, this Club thinks that they are above the law, they could do whatever they want. I just want them to know that they are not going to do whatever they want as far as I am concerned. I would expect the Board to act accordingly.

Mr. Astorino: That is why they are before us. They are in violation. That is what triggered their application to this Board.

Luigi Marinucci: That was all I wanted to say.

Mr. Astorino: Thank you.

Mr. Bollenbach: Have you been in touch with Black Meadow?

Luigi Marinucci: Yes. We are under legal action that I am pursuing very vigorously. What does the Board intend to do concerning that they have done something without getting an approval?

Mr. Bollenbach: That would be the Building Department.

Mr. Astorino: We do not do enforcement. That would be the Building Department of the Town.

Mr. Bollenbach: That is why they are here before us. We were talking about visual mitigation along other portions of the road. Are you looking for additional mitigation or plantings? Would you like the Board to consider that?

Luigi Marinucci: Something has to be done. The trees are still lying there.

Mr. Astorino: That is because they have a Stop Work Order.

Luigi Marinucci: The clear cutting extends into my property.

Mr. Astorino: That will be decided in your legal case.

Mr. Bollenbach: They will show where the trees were removed. We have that on the map.

Mr. Astorino: I think that is the dispute that we are talking about. Is that correct?

Mr. Bollenbach: No. This is in a non-disputed area.

Luigi Marinucci: This not a disputed area.

Mr. Bollenbach: It is not a disputed area.

Mr. Astorino: But, you have a legal proceeding going on this area.

Luigi Marinucci: Yes.

Mr. Astorino: So, we have another disputed area. Am I correct?

Luigi Marinucci: No, not a disputed area.

Mr. McConnell: I don't think you were on the site visit with us.

Mr. Astorino: No.

Mr. McConnell: There is the allegation that some of the trees that were cut that brought them to us were cut over the property line. It was not simply on the Black Meadow Club property.

Mr. Showalter: It is this man's trees.

Mr. Astorino: Ok.

Mr. McConnell: I believe that is what he is referring to when he says a legal action. It is not the dispute of the property line. It is a dispute as to where the trees were cut.

Mr. Astorino: Thank you for clearing that up.

Luigi Marinucci: The other problem is the clear cutting. I don't think you are allowed to do that. Is that right?

Mr. Astorino: You are not allowed to do that without getting a permit.

Mr. Bollenbach: They are here now. We are looking for mitigation.

Mr. Astorino: If you request some trees for screening or what have you...

Luigi Marinucci: I think something would have to be done. It looks horrible the way it was done.

Mr. Astorino: If they put a fence up there...

Luigi Marinucci: What kind of fence?

Mr. Astorino: It is a chain link fence.

Luigi Marinucci: I don't think a chain link fence would be acceptable.

Mr. Bollenbach: No. It would be something that would be acceptable to the Planning Board. It is a black matte vinyl clad chain link fence so that you don't have the light reflectivity. Also the covered poles, would have a black matte finish on it. The visibility is a low visibility fencing.

Mr. Astorino: But, if there was some mitigation plantings to screen.

Luigi Marinucci: Yes. Something would have to be done.

Mr. Bollenbach: Perhaps the applicant could make a proposal.

Mr. Astorino: We could add mitigation screening by adding more trees and/or plantings to screen and soften the view.

Luigi Marinucci: Yes. There would have to be some kind of mitigation.

Mr. Astorino: That would be something the Board would have to look at.

Mr. Showalter: That is why we are here. We want to get everything worked out. They cleared the land. We are trying to resolve the issue.

Luigi Marinucci: I am surprised somebody would do this knowing that there is a requirement for getting permission.

Mr. Singer: This has been done. Now, we would like to make the situation better. The cutting has been done. They have offered to move the fence back 10 feet in another section of this fence. If they move the fence back 10 feet and plant spruce trees as they outline previously, would that make it better for you?

Luigi Marinucci: Yes. I think it would be a step in the right direction.

Mr. Bollenbach: There could be plantings put onto your property.

Luigi Marinucci: I don't know about the trees along my property. I think the trees should be put along the fence and their property, and the fence on the other side of the trees.

Mr. Singer: If they move the fence back 10 feet, it will be on their property.

Luigi Marinucci: Right. Then, the fence and the trees could be on this side of the fence.

Mr. Astorino: That is the whole point.

Mr. Singer: It is an unfortunate situation. This is a way to mitigate it.

Luigi Marinucci: Right.

Mr. Bollenbach: Perhaps, your attorney could talk to their attorney.

Luigi Marinucci: The attorneys are talking. Thank you.

Mr. Bollenbach: Let us know.

Mr. Astorino: That is good. Is there anyone else wishing to address the Black Meadow Club application?

Mr. Lipman: I am here on behalf of Bill Leritz, the Grange, and the HOA. I would like to ask a couple of questions about the application. I see that there is an application for site plan approval and special use permit for the construction of the 5-foot fence. Is there an application before you for a special permit for the hunting club, gun club, or whatever?

Mr. Astorino: It is the Black Meadow Club.

Mr. Lipman: For the operation itself?

Mr. Astorino: No.

Mr. Lipman: The operation itself, I believe there is a non-conforming use. This use is permitted specially by a special permit. This is in the RU zone. Is that correct?

Mr. Astorino: Yes. John that is something you would have to look into.

Mr. Bollenbach: Yes. Let Mr. Lipman note his presentation. I will have to take a look.

Mr. Lipman: I don't think you can approve anything without the underlying use becoming a conforming use with a special permit. Secondly, I understand the fence is proposed to be located along the property lines or at property line. Where it comes close to the private road, Silvertail, there it would be set back about 10 feet. I think I know how to read. I read §164-41 Supplementary Regulations for residential district. There is no definition in the Ordinance about what residential districts are which districts are considered residential districts, at least none that I have found. However, I have to believe that the intent was to include every district where one and two family homes were permitted uses. That includes the RU District. I think that it is not a great leap of faith for me to assume that the RU zone is a residential district. In residential districts under the supplementary regulations, particularly Sub-Section (C)4(f), is the only language that I find in the Ordinance establishing where fences may be located on the property. I will read it to you. "It states; fences or walls not over 4 feet in height may be erected anywhere on the lot except on a corner lot where visibility would be an issue. Fences or walls with a height in excess of 4 feet shall conform to the requirements set forth herein for buildings." "A building is defined as any structure having a roof supported by columns or walls and intended for the shelter or housing or enclosure of persons, animals, that is a dwelling a factory or whatever. I am sure that the members of the Planning Board are familiar with the fact that buildings cannot be located in any required yard. I looked at the Table of Bulk requirements. If the Club was fortunate enough to acquire a special permit as a membership club it is required to meet the Bulk Requirements of Use Group 1. Use Group 1 has a requirement of a 50-foot setback for front, rear, and 35-feet for each side. In case of Plat K, which is shown here as the ownership of Black Meadow Club but which is not part of the area historically used by the Club as a hunting preserve. (It is a separate piece acquired in recent times is zoned residentially) there are requirements for that lot. Unless it is to become part of the Club, the use is established under Use Group a. In that case, the yard requirements are 100 feet in front, not 10 feet. It is 75 feet in the rear and on each side. Perhaps, I am not reading something correctly. Has this issue come up in the course of considering this application?

Mr. Astorino: We will take this under consideration. We will have our attorney review it. We will go from there.

Mr. Lipman: Fair enough.

Mr. McConnell: Mr. Lipman, do I understand you correctly that if this was an application for a 4-foot fence, we wouldn't have received that little bit of education.

Mr. Lipman: Yes.

Mr. McConnell: Ok.

Mr. Astorino: We will have our attorney review this. Is there anyone else wishing to address the Black Meadow Club application?

Michelle Babcock: I would like to respond. The first time that we had appeared, your attorney for the Board had taken the position as this as an agricultural use that this fence could be 5 feet in height. If this Board determines that is not correct based on what the Code is saying, the applicant has no problem with reducing the fence to be 4 feet in height.

Mr. Astorino: Ok. Is there anyone else wishing to address the Black Meadow application? Let the record show no further public comment. We have to get some more information and information from Ted. We will need to adjourn this public hearing to the December 19th Planning Board meeting.

Mr. Lipman: I will not be here. That is ok. That is not a concern of yours.

Mr. McConnell makes a motion to adjourn the Black Meadow Club public hearing to the December 19, 2007 Planning Board meeting.

Seconded by Mr. Singer. Motion carried; 3-Ayes and 1-Nay (Mr. Singer).

PUBLIC HEARING of Wilfred E. and Catherine C. Maynard

Application for final approval of a proposed 3-Lot cluster subdivision, situated on tax parcel S 64 B 3 L 23.1; parcel located on the eastern side of Cascade Lake Road 1900± feet south of Cascade Road, in the MT zone, of the Town of Warwick, County of Orange, State of New York. Continued Public Hearing from the 10/17/07 Planning Board meeting.

Representing the applicant: Dave Getz from Lehman & Getz. Curtis Ek, applicant.

The following review comments submitted by Tectonic:

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

YIELD PLAN (DATED 6/15/07):

3. No further comment. Board to consider. Board achieves consensus to accept Yield Plan 10/17/07.

CLUSTER PLAN (DATED 10/11/06, REVISED 8/13/07)

4. Identify Seminole Drive on Vicinity Map and plans.
5. Applicant proposes three cluster lots when the allowable Yield Plan density is four lots. Applicant proposes a possible future subdivision of Lot #2 into two lots, subject to the review and approval of the Planning Board (Note #17). Revise Note #17 to the Planning Board Attorney's specification. Add declaration & recording information.
6. Applicant proposes two alternate locations for the dwelling on Lot #2, both conforming to the 100 foot setback required by §164-41.1H(2)(a). The dwelling is proposed to be located within the Ridgeline Overlay District where "constructed structures shall not differ more than 20 feet in any direction from building site locations shown on the approved (plan)". Applicant seeks approval for both locations. Board to discuss.
 - o §164-47.1 Ridgeline Overlay District does not preclude alternative structure siting.
 - o Refer to General Note #19.
7. Provide notes for construction, compaction and stabilization of 2:1 slopes, per the note on sheet 4. Provide a detail for installation of an appropriate rolled erosion control product.
8. Provide erosion control measures on plans consistent with the current "NYS Standards and Specifications for Erosion & Sediment Control" for all driveway embankment slopes, and include details.
9. Provide supplemental plantings on Lot #3 to provide additional screening for SBL 64-3-22.12. Consider reconfiguring driveway.
10. Detail the proposed timber guiderail for Lot 2 Alternate B.
11. Add note stating: "No site preparation or construction, including utility connections, shall commence before a valid Driveway Permit has been secured from the Town of Warwick Department of Public Works."

BEFORE FINAL APPROVAL:

12. Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes and Radon Reduction Notes.
13. Applicant to provide 9-1-1 addressing.
14. 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.
15. Pay parkland fees.

The following comment submitted by the Conservation Board, dated 11/21/07:

Wilfred E. and Catherine C. Maynard - CB is still concerned about future use of lot that is transected by California Road. CB recommends restrictive notes be placed on the plan to indicate that in the event any future development of Lot 2 is proposed in the vicinity of California Road, applicant be required to go through long form EIS process.

The following comment submitted by the ARB:

Wilfred E. and Catherine C. Maynard – None submitted.

Comment #1: Board to discuss SEQR.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 11/21/07: “The proposed two new dwellings on Cascade Lake Road have raised a number of SEQR issues. The site is in the Town’s RL-O2 district and the applicant has provided the Board with a Full SEQR Environmental Assessment Form (EAF) and the Visual EAF Addendum. The Appalachian Trail adjoins the site but is well removed from any construction activity. Ridgeline map notes have been placed on the plans and will be placed in the deeds for the proposed three lots Wildlife was raised as an issue by the New York Natural Heritage Program, which identified three species of conservation concern in the area including the Bog turtle, Indiana bat, and Rattlesnake. Robert Torgersen surveyed the site and found no suitable habitat for the Bog turtle or Indiana bat. Rattlesnake habitat was found but at the higher elevations of the site near the Appalachian Trail, which is far removed from the proposed two house locations. Three vegetation community types of concern are also located in the area as well; two of the three are well removed from any construction activity, being located in the vicinity of the Appalachian Trail. The third community type is relatively common on the lower reaches of Bellvale Mountain, where construction activity is proposed, as outlined in the draft Negative Declaration.”

Comment #2: Applicant to discuss project.

Dave Getz: It is a parcel of about 48 acres. There is one existing house on the property. We are proposing a 3-lot cluster subdivision with 2 new single-family homes with driveways off Cascade Lake Road. The yield plan prepared for the property provides 4 lots. I know that is one of the topics for discussion. Since our last appearance, Bob Torgersen wrote a letter to the Board after discussing the environmental impacts with Ted Fink. That letter was provided on 11/12/07. We have also revised the driveway for lot 3. Some faxes were sent back and forth to Ted and Zen.

YIELD PLAN (DATED 6/15/07):

Comment #3: No further comment. Board to consider. Board achieves consensus to accept Yield Plan 10/17/07.

CLUSTER PLAN (DATED 10/11/06, REVISED 8/13/07)

Comment #4: Identify Seminole Drive on Vicinity Map and plans.

Dave Getz: Will do.

Comment #5: Applicant proposes three cluster lots when the allowable Yield Plan density is four lots. Applicant proposes a possible future subdivision of Lot #2 into two lots, subject to the review and approval of the Planning Board (Note #17). Revise Note #17 to the Planning Board Attorney's specification. Add declaration & recording information.

Dave Getz: Will do.

Comment #6: Applicant proposes two alternate locations for the dwelling on Lot #2, both conforming to the 100 foot setback required by §164-41.1H(2)(a). The dwelling is proposed to be located within the Ridgeline Overlay District where "constructed structures shall not differ more than 20 feet in any direction from building site locations shown on the approved (plan)". Applicant seeks approval for both locations. Board to discuss.

- o §164-47.1 Ridgeline Overlay District does not preclude alternative structure siting.
- o Refer to General Note #19.

Mr. Bollenbach: We discussed that there is no prohibition in the code regarding alternate layout. They meet the criteria. A Visual EAF Analysis has been provided. I believe that both locations are satisfactory to the Board.

Mr. Astorino: I think so.

Mr. McConnell: Yes.

Comment #7: Provide notes for construction, compaction, and stabilization of 2:1 slopes, per the note on sheet 4. Provide a detail for installation of an appropriate rolled erosion control product.

Dave Getz: Ok.

Comment #8: Provide erosion control measures on plans consistent with the current "NYS Standards and Specifications for Erosion & Sediment Control" for all driveway embankment, slopes, and include details.

Dave Getz: Ok.

Comment #9: Provide supplemental plantings on Lot #3 to provide additional screening for SBL 64-3-22.12. Consider reconfiguring driveway.

Dave Getz: We did. I have a sketch of the driveway that shows it wrapping around the far side of the house.

Mr. McConnell: Looking at the sketch, the driveway had been proposed on the left hand side of the house and now it is on the right hand side of the house?

Dave Getz: Yes. The entrance is at the same location.

Mr. Astorino: Dave, have you added some trees?

Dave Getz: Yes. They will be Norway Spruces.

Mr. Astorino: What size?

Dave Getz: It will be 6 to 8 feet in height.

Mr. Astorino: Ok.

Zen Wojcik: Mr. Chairman, I have discussed this with Ted today. It is incorporated into the Negative Declaration.

Mr. Astorino: Ok.

Comment #10: Detail the proposed timber guiderail for Lot 2 Alternate B.

Dave Getz: Will do.

Comment #11: Add note stating: "No site preparation or construction, including utility connections, shall commence before a valid Driveway Permit has been secured from the Town of Warwick Department of Public Works."

Dave Getz: Ok.

BEFORE FINAL APPROVAL:

Comment #12: Provide the declaration and the recording information on the plan for Ridgeline Overlay Notes and Radon Reduction Notes.

Dave Getz: Yes.

Comment #13: Applicant to provide 9-1-1 addressing.

Dave Getz: Yes.

Comment #14: 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.

Dave Getz: Ok.

Comment #15: Pay parkland fees.

Dave Getz: Yes.

Comment #16: Pay outstanding review fees.

Dave Getz: Ok.

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

Mr. McConnell: Has this been advertised? My wife was reading to me an advertisement for a 48-acre parcel.

Curtis Ek: We had been trying to sell it quite awhile as a lump sum. We had no bites on it.

Mr. McConnell: It seems to me that this ad had said something about having approval for a 3-lot subdivision. That would be improper if it was being advertized that way.

Curtis Ek: No. It is only listed as a whole.

Mr. McConnell: Ok. Maybe, it was a different piece.

Curtis Ek: The Realtor told me that we only could list it as a one piece right now until we received approval.

Mr. McConnell: That was why I raised it.

Mr. Astorino: Does the Board have any further comments? This is a public hearing. If there is anyone in the audience wishing to address the Maynard application, please rise and state your name for the record. Let the record show no public comment.

Mr. McConnell makes a motion for the Negative Declaration.

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

617.12(b)

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

Name of Action: Maynard Subdivision

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

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

Whereas, the Planning Board has reviewed an Environmental Assessment Form (EAF) for the action dated 10/10/06, the probable environmental effects of the action, and has considered such impacts as disclosed in the EAF.

Now Therefore Be It Resolved, that the Planning Board adopts the findings and conclusions relating to probable environmental effects contained within the attached EAF and Negative Declaration and authorizes the Chair to execute the EAF

and file the Negative Declaration in accordance with the applicable provisions of law, and

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

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

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

Mr. Showalter makes a motion on the Wilfred E. and Catherine C. Maynard application, granting final approval for a proposed 3-Lot cluster subdivision, situated on tax parcel S 64 B 3 L 23.1; parcel located on the eastern side of Cascade Lake Road 1900± feet south of Cascade Road, in the MT zone, of the Town of Warwick, County of Orange, State of New York, subject to the following conditions:

1. Identify Seminole Drive on Vicinity Map and plans.
2. Applicant proposes three cluster lots when the allowable Yield Plan density is four lots. Applicant proposes a possible future subdivision of Lot #2 into two lots, subject to the review and approval of the Planning Board (Note #17). Revise Note #17 to the Planning Board Attorney's specification. Add declaration & recording information.
3. Applicant proposes two alternate locations for the dwelling on Lot #2, both conforming to the 100 foot setback required by §164-41.1H(2)(a). The dwelling is proposed to be located within the Ridgeline Overlay District where "constructed structures shall not differ more than 20 feet in any direction from building site locations shown on the approved (plan)". Applicant has approval for either location.
4. Provide notes for construction, compaction, and stabilization of 2:1 slopes, per the note on sheet 4. Provide a detail for installation of an appropriate rolled erosion control product.
5. Provide erosion control measures on plans consistent with the current "NYS Standards and Specifications for Erosion & Sediment Control" for all driveway embankment slopes, and include details.
6. Provide supplemental plantings on Lot #3 to provide additional screening for SBL 64-3-22.12. Reconfigure driveway and provide Planting Bond.
7. Detail the proposed timber guiderail for Lot 2 Alternate B.
8. Add note stating: "No site preparation or construction, including utility connections, shall commence before a valid Driveway Permit has been secured from the Town of Warwick Department of Public Works."
9. Provide the Declaration and the Recording Information on the plan for Ridgeline Overlay Notes and Radon Reduction Notes and Open Space Notes.
10. Applicant to provide 9-1-1 addressing.
11. 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.
12. Pay Parkland Fees.
13. Pay Outstanding Review Fees.

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

Dave Getz: Thank you.

PUBLIC HEARING of Salvatore and Linda Mongelluzzo

Application for preliminary approval of a proposed 2-Lot cluster subdivision, situated on tax parcel S 31 B 2 L 44.32; parcel located on the southeasterly side of Ackerman Road, 1200± feet off of the intersection of Kings Highway (County Highway 13), in the RU zone, of the Town of Warwick, County of Orange, State of New York.

Representing the applicant: Jay Myrow, Attorney.

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

Mr. Astorino: Thank you.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
 - A. Applicant to obtain DEC permit for culvert and driveway crossing of stream.
2. Applicant to discuss project.

YIELD PLAN (LAST REVISED 1/17/07) :

3. No further comment. Board accepted Yield Plan by consensus on February 21, 2007.

CLUSTER PLAN (LAST REVISED 10/31/07) :

4. Provide a clarified plan – some text and limit of open space obscured by shading.
5. Update revision box on sheet 1 of 3.
6. Board and applicant to discuss extension of Entin Terrace.
 - A. Applicant to provide proof of right-of-way extension from SBL 31-2-49.
 - B. Applicant to provide a copy of the Entin Terrace Maintenance and Use Agreement for the Planning Board Attorney's review.
7. The culvert at the driveway is shown as both a 3'x5' CMP and a 36" HDPE. Provide supporting calculations for hydraulic opening and clarify culvert size.
8. Show a schematic view of the culvert crossing, including headwall. (Submit detail referenced in DEC permit application.)
9. Parent subdivision of parcel (1984) shows that a 25' strip of Ackerman Road was dedicated to the Town. Applicant to research and report if dedication was filed and/or accepted.

BEFORE FINAL APPROVAL:

10. Provide the declaration and the recording information on the plan for Private Road Use and Maintenance Notes, Open Space Notes, and Right-of-Way Easement.
11. 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.
12. Applicant to provide 9-1-1 addressing.
13. Pay parkland fees.
14. Pay outstanding review fees.

The following comment submitted by the Conservation Board, dated 11/21/07:

Salvatore and Linda Mongelluzzo - CB notes that the current plan shows shading over the plan details rendering it difficult to read. The CB also questions the designation of the conservation easement. Has the developer identified who will be the beneficiary of the easement? Given the conservation easement appears to completely surround the development, the CB also strongly recommends permanent visible markers be placed along the border between the conservation

The following comment submitted by the ARB:

Salvatore and Linda Mongelluzzo – None submitted.

Comment #1: Board to discuss SEQR.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 11/21/07: “The subdivision is an Unlisted Action. Issues of concern include stream disturbance of a protected stream and the need for recreational facilities. Access to the proposed new building lot for construction of one single family dwelling will require a Protection of Waters Permit from the DEC prior to Final Plat approval. No significant impacts to the stream are expected as long as the erosion control plans are properly followed. A draft Negative Declaration has been prepared.”

A.) Applicant to obtain DEC permit for culvert and driveway crossing of stream.

Comment #2: Applicant to discuss project.

Jay Myrow: It is a proposed 2-lot cluster subdivision. The applicant received a 280a variance. The variance resolution has been placed on the map. Do you have the maps that he dropped off today?

Connie Sardo: Yes. I received two maps. The map is in the file. One map is for our file and the other map is for you. I received them after 4:00 p.m. today.

Jay Myrow: This map will show the printing area that was cleaned up.

Mr. Astorino: Ok.

YIELD PLAN (LAST REVISED 1/17/07) :

Comment #3: No further comment. Board accepted Yield Plan by consensus on February 21, 2007.

CLUSTER PLAN (LAST REVISED 10/31/07) :

Comment #4: Provide a clarified plan – some text and limit of open space obscured by shading.

Mr. Astorino: This is what Mr. Myrow has just provided us.

Mr. Bollenbach: It is the same map but clearer.

Jay Myrow: Yes.

Comment #5: Update revision box on sheet 1 of 3.

Jay Myrow: No problem.

Comment #6: Board and applicant to discuss extension of Entin Terrace.

Jay Myrow: We have the 280a variance for accessing Entin Terrace.

- a. Applicant to provide proof of right-of-way extension from SBL 31-2-49.

Jay Myrow: John, I thought you had the agreement that I have given you.

Mr. Bollenbach: There was an agreement that they would enter into a R.O.W. Is that that the one?

Jay Myrow: Yes. Carol Sapanaro had signed an agreement that provides upon approval we would be given a R.O.W. The R.O.W. is mapped. The extent of it is an attachment to the agreement. It goes all the way to the top of the Mongelluzzo's property.

Mr. Bollenbach: What we will do, prior to final....

Jay Myrow: We will have to get you the easement.

Mr. Bollenbach: Yes.

Mr. McConnell: Mr. Bollenbach, is the R.O.W. the same thing as an easement? I am looking at the ZBA Resolution. In that resolution, they talk about an easement.

Mr. Bollenbach: A lot of times they are used interchangeably. It is actually a R.O.W.

Mr. McConnell: Ok. It says here that it acknowledges that there is an agreement with the landowner that an easement be granted to extend the road, but the easement does not yet exist.

Mr. Bollenbach: It will be a R.O.W. That is consistent.

Mr. McConnell: Ok. Thank you.

- b. Applicant to provide a copy of the Entin Terrace Maintenance and Use Agreement for the Planning Board Attorney's review.

Mr. Bollenbach: I faxed something to Jay.

Jay Myrow: I don't know where you received it from.

Mr. Bollenbach: I think that Wayne Stevens lives on Entin Terrace.

Jay Myrow: All right. It is not of record. We have searched title. It is still not of record.

Mr. Bollenbach: What we will do is maybe extend an invitation to all the people on Entin Terrace. We have done this with other applications to see if we can get some type of a formal agreement. Or, if it is the applicant that wants to maintain it at his own expense in its entirety, that will be up to him. See what you want to do.

Jay Myrow: We will do it either way. We are prepared to file declarations that say we will maintain it. I will contact the Sapanaro's.

Mr. Bollenbach: I think they have a good working relationship. This might be a good time to reduce it to writing so that it continues to be good and then record it.

Jay Myrow: I could represent to the Board that we have agreed on the record that whatever Association exist, we would participate.

Comment #7: The culvert at the driveway is shown as both a 3'x5' CMP and a 36" HDPE. Provide supporting calculations for hydraulic opening and clarify culvert size.

Jay Myrow: Zen, Kirk told me that this would be part of the DEC application.

Zen Wojcik: Yes.

Comment #8: Show a schematic view of the culvert crossing, including headwall. (Submit detail referenced in DEC permit application.).

Mr. Astorino: The DEC has to approve this.

Zen Wojcik: These comments will be staying on. They would have to be submitted before final approval.

Mr. Astorino: Ok.

Comment #9: Parent subdivision of parcel (1984) shows that a 25' strip of Ackerman Road was dedicated to the Town. Applicant to research and report if dedication was filed and/or accepted.

Jay Myrow: The titles shows that it was not. We will add the strip to this map. We will submit a deed. That is not an issue.

Mr. Bollenbach: Yes.

BEFORE FINAL APPROVAL:

Comment #10: Provide the declaration and the recording information on the plan for Private Road Use and Maintenance Notes, Open Space Notes, and Right-of-Way Easement.

Jay Myrow: No problem.

Comment #11: 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.

Jay Myrow: Yes.

Comment #12: Applicant to provide 9-1-1 addressing.

Jay Myrow: Yes.

Comment #13: Pay parkland fees.

Jay Myrow: Yes.

Comment #14: Pay outstanding review fees.

Jay Myrow: Yes.

Mr. Astorino: Does the Board or its Professionals have any comments?

Zen Wojcik: Mr. Chairman, there was a point brought up when the Board was discussing surfacing of Entin Terrace.

Mr. Astorino: Yes.

Zen Wojcik: There is a pipeline underneath it. I think the applicant was supposed to find out if there were any restrictions to surfacing of the road.

Mr. Astorino: What did you find out?

Mr. Bollenbach: Is that where they are clearing. Is that the extension of Entin Terrace where they are clearing?

Mr. Astorino: Yes.

Jay Myrow: It looks like the recorded easement was in favor of Home Gas Company.

Mr. Bollenbach: Yes.

Jay Myrow: Ok. Home Gas Company, this was done in 1949. My review showed that there was nothing either way as to what is required for the condition of the road. I will give a copy of this to John now.

Mr. Bollenbach: Connie, put this in the file on top of the file.

Connie Sardo: Yes.

Mr. Bollenbach: Is the R.O.W. for the gas shown on the subdivision plan? Is it located in the location map?

Zen Wojcik: It goes down the middle of Entin Terrace. It doesn't go right in front of Mongelluzzo's R.O.W. Right now, it is a dirt road. The Board might want to have the road improved. There may be preclusions from the Code of Federal Regulations or there may be something from the Pipeline, that they cannot have a paved surface on top of the pipeline because of accessibility.

Mr. Bollenbach: They were planning to put it down the middle of Old Ridge Road.

Mr. Astorino: That precludes that.

Mr. Bollenbach: Get in touch with them. Let them know that you have a driveway. You could have some cuts and fills to see what kind of cuts you might need that coordinates with the pipeline. It might have to be dropped a little lower. I know that was done on the Feagles subdivision. Give them a heads up. We should get a sign-off from them as to the driveway location.

Mr. Astorino: So that it would not affect where their line is.

Mr. Bollenbach: So that it would not affect the installation of their gas line.

Jay Myrow: What is not going to affect?

Mr. Astorino: The cuts, fills, and the driveway.

Mr. McConnell: It looks like the easement doesn't touch where the proposed driveway is. It looks like there is a gap there.

Mr. Astorino: There is. So, it wouldn't even affect that.

Mr. McConnell: It is close. It seems like the Columbia Gas easement comes in at an angle. It doesn't touch the edge of the road where the driveway comes in.

Jay Myrow: I will have to clarify it. I know that my clients were giving a 25-foot easement.

Mr. Astorino: I would definitely clarify with the Pipeline Company.

Jay Myrow: Ok. We will let them know that we are putting in a driveway there.

Mr. Astorino: Mark out the driveway location.

Zen Wojcik: Mr. Chairman, I guess I wasn't clear. The Board has had discussions as to what to do with Entin Terrace.

Mr. Astorino: As far as surfacing Entin Terrace.

Zen Wojcik: It is a dirt road. It has a pipeline that runs down the middle of the road. It is not in front of Mongelluzzo's property. It is down Entin Terrace. Before the Board was to require Mongelluzzo or whoever else to pave the road, tar and chip, or put gravel on the road, I would suggest that the applicant could look into what restrictions the Pipeline might have under the Federal Regulations for putting in any surfacing. This way the Board wouldn't be in position of requiring the applicant to do something that the Federal Government would be prohibiting them from doing it.

Mr. Astorino: Do you think there is a restriction of putting in any type of surface?

Zen Wojcik: I think there is.

Jay Myrow: We will check that out.

Mr. Astorino: The bottom line is that we have done it before. We have done it on West Lake Road and private roads. My opinion is that the gas line is going down the middle of Entin Terrace. That will happen in the spring. To do anything right now to Entin Terrace would be foolish. My opinion is once the Gas Company pulls out of there, it will be a nice graveled road completely redone. I would hope for that. When the gas line pulls out of there, they will have to redo the road where they just cleared.

Jay Myrow: Would they do that?

Mr. Astorino: I would hope so at their expense. They should replace it as it is. It should be better because it would be new material on top of the road. Whether this Board would require anything else or not, it would be up for discussion.

Mr. Singer: What about stabilizing the rest of the driveway?

Mr. Astorino: That has to be done.

Jay Myrow: The ZBA says that you have authority over that portion.

Mr. Astorino: That was nice of them. I am talking about Entin Terrace itself.

Mr. Bollenbach: It is something to consider. We have a long time between preliminary and final.

Mr. Astorino: Right. Does the Board have anything else? This is a public hearing. If there is anyone in the audience wishing to address the Mongelluzzo application, please rise and state your name for the record.

Bob Krahulik: I am the attorney for Chris and Ken Zimmerli. They live in the adjacent subdivision Alder Terrace. I will quickly address the issue of improving the Private road. If you recall, the Board did require Bob Sodrick to improve the entire length of Van Sickle Road. Eventhough there were other houses on that road that refused to contribute to the improvement of that road. This Board has required that in the past.

Mr. Astorino: That is something we will consider as we move forward on this application.

Bob Krahulik: More importantly is the classification of this subdivision as a cluster subdivision. If you look at the definition of a cluster subdivision under §164-41.1, I would like the Board to take some discussion of the criteria to help us understand why this is being treated as a cluster. Specifically in the very definition of a cluster subdivision, the statue says; "it is when lots and dwellings are clustered closer together then otherwise possible of a conventional subdivision." I look at this subdivision map. I can't imagine houses spaced more further apart then they are in this. The classification of this as a cluster subdivision just defies my wildest imagination. If we go through the criteria #1 through #11, I will spare the chore of going through each and every one. I don't see where any of the 11 criteria is applicable to this particular application. In absent of the definition of this subdivision as a cluster subdivision, my next question would be an examination of the minimum lot size requirements for this application.

Mr. Astorino: If it is not a cluster?

Bob Krahulik: Say that it is a cluster. How much acreage should the entire parcel have in order to allow 2 lots?

Mr. Bollenbach: In the RU zone?

Bob Krahulik: Yes.

Mr. Bollenbach: It would be 3 acres each. It would be 6 acres.

Bob Krahulik: I think the RU zone is 4 acres minimum lot size.

Mr. Astorino: That would be under a conventional subdivision. If you go with a cluster, it is 3 acres.

Zen Wojcik: For a yield, it is 3 acres.

Bob Krahulik: If you look at §164-41.1(d), unless I am looking at an older version of the code; “the permitted number of dwelling units shall not exceed the number of units that the Planning Board’s judgment would be permitted if the land were subdivided into 2 lots conforming to the minimum lot size and density requirements of this chapter applicable to the district or districts that such land is treated and conforming to all the requirements.” I don’t see where.

Mr. Bollenbach: Take a look at the end of the Bulk Table. Take a look at the last page of the Bulk Table. It is §164-40N. These are the Use Groups. It says cluster subdivision density bonus. It is the diamond. If you are in the RU, it is Use Group b. If you go to the diamond, lot area 3-acre and to provide a yield plan...

Bob Krahulik: I understand that. I don’t know if it is consistent with §164-41.1. It clearly says; “the number of dwelling units that are permitted is based on a number of units that would be permitted under a conventional subdivision.” That little footnote is interesting. I don’t think the Code says that.

Mr. Bollenbach: I will take a look at that, but that is the way we have applied it.

Bob Krahulik: I think you could only make the leap if you are going to follow the footnote. You could only make the leap and allow the reduced minimum lot size if this is in fact a cluster subdivision. I would very much appreciate a discussion among the Board member of §164-41.1(a) numbers 1 through 11.

Mr. Astorino: The Board has deemed this as a cluster. We have discussed this numerous times at our work sessions. That is where we are at this point.

Bob Krahulik: Ok. I hope there is an adequate record.

Mr. Bollenbach: It has to be discussed on the record. What we discuss at the work sessions is one thing. We have to discuss it.

Bob Krahulik: When I look at this map and to steal Mr. Lipman's own words, if it doesn't quack like a duck, waddle like a duck, and fly like a duck, it is not a duck.

Mr. Astorino: John, do you want to discuss it.

Bob Krahulik: I don't see how this could be considered a cluster subdivision. If it is not a cluster subdivision, I think you would need 8 acres or a variance.

Mr. Astorino: Without a doubt, if it is not a cluster, the lot sizes go up.

Bob Krahulik: There are two other comments. The driveway improvements disturb significant portions of the open space. I think a reading of any of our open space deed restrictions would tell you that type of improvement within an open space area is something not permitted. I would recommend either increasing the amount of open space that the applicant is providing and deducting the amount of land being disturbed or not approving the application that is proposed. The Zimmerli's are going to discuss with you the significant amount of water that will flow through that Class B stream in the event of a storm. They have many sets of photographs for each Board member. I am very uncomfortable relying on the DEC to make sure that the bridge crossing is properly engineered. I would hope that our Town Engineer and the applicant's Engineer would provide some type of construction detail so that we know the amount of water that would be going through that bridge would be handled.

Mr. Astorino: I think we had that in comment #7.

Zen Wojcik: There would be a culvert pipe.

Bob Krahulik: I heard some discussion that the issue would be deferred to the DEC. If they get a DEC permit, that is all you will look at.

Mr. Astorino: I don't believe that was all the intent.

Mr. Bollenbach: It says, provide details.

Mr. Astorino: In comment #7, it says to provide supporting calculations for hydraulic opening and clarify culvert size to Town Engineer's specifications. That is a Tectonic comment.

Bob Krahulik: I will now allow the Zimmerli's to discuss their observations.

Chris Zimmerli: When it does rain, this whole side of the hill does come up. We have pictures.

Mr. Astorino: When was this taken? Was this in April?

Ken Zimmerli: This was from one of the big floods that we had. This was from heavy rain that we had for a couple days. It wasn't like a major thing. When it really rains and I stand on my back porch, it sounds like the Colorado River back there. One of the owners of the adjacent property, which is the house closest to the entrance off Entin Terrace, he was telling me the actual trench, fills up with water. It is about 6 feet deep. He has some problems right

now. He will be contacting somebody. It is washing away portions of his back yard. He has to address that issue with either the DEC or somebody because that is a designated area. Our concerns are and when our cluster subdivision went up, there were great concerns about the two ponds below on Kings Highway. It was about the pollution in the ponds. We were not allowed to pave the road. We understood that. If we wanted to pave the road, we would have to put in holding areas and ponds that would have to be pumped out periodically to make sure no pollution was going in there. My concern is that I have been back there when it was really coming down. I have seen the water come through that area. I have stated to you before that if they build a house there, it will end up down into the pond. I am concerned about the septic system that is in that designated area. It is all guesswork on what will happen. We get floods in there. It is a real low area there. Are we going to wash out the septic system? It could get washed out and go right into the stream and pollute the pond below. There are a lot of issues here. I am not going to say that you should walk the property again. I don't know if you walked the total property and had seen the water lines up on the rocks where it is. There is a problem here.

Chris Zimmerli: If you look at the adjoiners pond on the map, it has definitely come up past the leach fields.

Mr. Astorino: We have walked the subdivision. As far as this water, it will have to be addressed. It will be addressed by our Engineers and the DEC. Your attorney had pointed out that it should not just rely on the DEC. I agree with that. It will be rectified with our own Engineers.

Ken Zimmerli: If you go up Ackerman Road, you and Chris had just discussed about that pipe that was just redone. The water that backs up there, there is a newer house down around the bend, which is Mr. LaFerna. He came to my office today. He received a notice about the meeting tonight, He was telling me about the amount of water that pours off the ridge by Cedar Lane down to his house. He said that he has had 3 feet of water on his front lawn.

Mr. Astorino: That new pipe should take a lot more water than the old pipe had. That was an old steel pipe that was there. That was only a 2-foot pipe that was there.

Ken Zimmerli: Keep in your mind that the water coming out of the pond above that, that crosses under the road, this lot is downstream from that. It is right in the flow of it all. There are a lot of issues. I feel sorry for the guy that builds there. The water problem is unbelievable.

Chris Zimmerli: If the leach fields get washed out, would that come into our wells?

Mr. Astorino: That is why we are doing extensive testing to make sure that doesn't happen. Zen, where the septic is, is that a floodplain?

Zen Wojcik: No.

Ken Zimmerli: I have been back there when it was really coming down.

Mr. McConnell: Do any of these photos show that?

Chris Zimmerli: No. That is located downstream.

Mr. McConnell: I am not sure what these photos are meant to show.

Ken Zimmerli: Keep in mind this is 6 feet deep. The actual creek itself, when it is dried up and no water is rushing through, it is almost 6 feet deep.

Mr. Astorino: We were there. It is dry now.

Bob Krahulik: Relevant to the pictures, that is the stream that the driveway has to cross.

Mr. Astorino: Exactly. The pipe will have to be sized accordingly.

Chris Zimmerli: Does it have to be a pipe or a bridge?

Mr. Astorino: That is what we have to determine.

Zen Wojcik: In the process of getting a permit from the DEC, this is a regulated stream. The applicant will have to provide hydraulic calculations for a worst-case scenario design storm. It may be in excess of the photographs that we have here. I don't know. Getting a permit from the DEC, they will have to do those calculations to the satisfaction of the DEC from the data that the DEC has. From that, we would go to what the elevations of the stormwater would be and what the proper size of the opening would be. He won't be able to get a permit for something that is less than that. The nature of the permit is not to permit any more damage off the property than is there. If he wants to have a smaller size pipe or a smaller size bridge opening, as long as the damage from any flood would be contained upon his property, that would be ok with the DEC. We are not talking about a very large property. In all likely-hood, he would have to have something that would pass the storm. There would not be any effect positive or negative on the storm that is there right now. That is what we are going to get when the applicant gives us a copy of the permit. Then, we will look at the calculations before we go into final approval on this.

Ken Zimmerli: The flooding is all coming from that original stream. It comes down Entin Terrace and goes right in. It floods everything out.

Mr. McConnell: Is there anything in this application that you think will increase that flow? It is my understanding is that whatever it is will be, even if this is built. There is nothing here that I see is going to affect that.

Mr. Astorino: It was the same with the subdivision that you are in. You went through the same concerns with that as far as increasing "stormwater runoff". That was a major concern of this Board.

Ken Zimmerli: We have addressed that issue on our subdivision. We have taken care of that. There are no erosion problems.

Mr. Astorino: Or, there is no increase of runoff.

Ken Zimmerli: There is no increase of runoff or anything. My question is, where is the house is going and the where is the septic field is going.

Mr. Astorino: That is what Zen had just pointed out. If we get those elevations from the DEC of the most severe flood levels or storm levels, then we will know where it would come out. That would give us the calculations that we need.

Mr. Bollenbach: It would be a SEQR issue. We have a Negative Declaration proposed.

Zen Wojcik: But, the Negative Declaration could always be revisited.

Mr. Bollenbach: Yes, it can. But, it is up to the Board. Was there any mottling that was witnessed in the deeps? Zen, maybe you could explain what the mottling is.

Zen Wojcik: If land is submerged for any period of time, it drives the oxygen out of the ground. That causes minerals in the ground to coagulate. When you dig into soil like this, you have these nodules of certain minerals. That is called mottling. It will look like it has poka dots on it. When our inspectors are out there and witnessing perc's and deeps, one of the things that we look for is if there is any evidence of where the water table is and any evidence of seasonal flooding or mottling. That would be an indication of the ground water rising up and going back down seasonally. There was no mottling on this site. We asked them how they would mitigate this. Very often, they would put a curtain drain in. That is acceptable to the Department of Health. We are also concerned if the area doesn't drain properly, it will not function. We did not see any evidence of that in the tests.

Mr. Astorino: Ok. Now, do you want to go through the cluster end of this?

Mr. Bollenbach: Just for the Board's information, take a look at it and read it at your leisure. It is just the intro to the clustering. It is Section A. It says in the conformance in the Town's Comprehensive Plan the purpose of cluster subdivisions are as follow. It is from the Comprehensive Plan. There are 11 different considerations. If you go into Section B the authorization to underneath that, "the Planning Board may require cluster subdivision where it finds anyone of the following elements present." It goes through and lists H, I, J, K, and L elements. If it is steep slopes or wetlands or what have you, the Planning Board could mandate it. If you only find one of them, K and L, or the applicant requests it. That is the particular case that we have at hand.

Mr. Astorino: Ok. Does the Board have anything further? Is there anyone else wishing to address the Mongelluzzo application? Let the record show no further public comment. Does someone care to make a motion on the Negative Declaration?

Mr. Bollenbach: You could go ahead with that. If there is something else that comes up, it could be revisited.

Mr. McConnell: Mr. Chairman, I would feel more comfortable in waiting until we have a couple of these questions answered.

Mr. Astorino: The only concern that I have is that without preliminary they cannot file the application with the DEC. That is going to give us the answers that we are looking for as well as water level, topography, and where this water is going to come. That could give us the answers.

Mr. McConnell: Ok. The point has been taken.

Mr. McConnell makes a motion for the Negative Declaration.

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

617.12(b)

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

Name of Action: Mongelluzzo Cluster Subdivision

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

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

Whereas, the Planning Board has reviewed an Environmental Assessment Form (EAF) for the action dated 4/6/06, the probable environmental effects of the action, and has considered such impacts as disclosed in the EAF.

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

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

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

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

Mr. Showalter makes a motion on the Salvatore and Linda Mongelluzzo application, granting , preliminary approval for a proposed 2-Lot cluster subdivision, situated on tax parcel S 31 B 2 L 44.32; parcel located on the southeasterly side of Ackerman Road, 1200± feet off of the intersection of Kings Highway (County Highway 13), in the RU zone, of the Town of Warwick, County of Orange, State of New York:

Seconded by Mr. Singer.

Mr. McConnell: I would like to state that I often had problems with 2-lot cluster subdivisions. That is something that I would like to see be addressed in the future.

Mr. Astorino: Maybe a recommendation. We will discuss that at a work session for the Town Board for zoning revisions.

Mr. McConnell: Or, to the Comprehensive Plan Review Committee.

Mr. Astorino: Ok. Is there any further discussion?

Motion carried; 4-Ayes.

Jay Myrow: Thank you. Have a great holiday.

Review of Submitted Maps:***Panoramic Farms c/o Irwin Peckman***

Application for sketch plat review of a proposed 47-Lot + 4-Affordable Homes subdivision, entitled, "***Mountain View Estates***", situated on tax parcel S 18 B 1 L 2; parcel located on the eastern and western sides of Old Ridge Road 1500 feet south of Taylor Road, in the MT/RU zones, of the Town of Warwick. Previously discussed at the 10/3/07 Planning Board meeting. Planning Board to discuss setting a date for Public Scoping.

Representing the applicant: Mr. Lipman, Attorney.

The following review comments submitted by Tectonic:

1. Board to discuss SEQR.
 - A. The Board adopted a Positive Declaration on October 3, 2007. The Applicant has provided a Draft Scoping Document for the preparation of a Draft Environmental Impact Statement. Board to consider a date for a public Scoping Session.

The following comment submitted by the Conservation Board, dated 11/21/07:

Mountain View Estates – No comment at this time.

The following comment submitted by the ARB:

Mountain View Estates – None submitted.

Comment #1: Board to discuss SEQR.

- A. The Board adopted a Positive Declaration on October 3, 2007. The Applicant has provided a Draft Scoping Document for the preparation of a Draft Environmental Impact Statement. Board to consider a date for a public Scoping Session.

Mr. McConnell: The following SEQR comment has been prepared by Mr. Ted Fink, dated 11/21/07: "The Planning Board has issued a Positive Declaration on this application. The applicant has submitted a Draft Scoping Document that outlines the issues that their professionals believe should be included in the Draft EIS. Public participation on the development of a Final Scoping Document is required by the SEQR regulations. I suggest that the Planning Board schedule a "scoping session" at an upcoming Planning Board meeting to provide members of the public with the necessary input. A week to 10 day period after the scoping session is also suggested for anyone who wishes to submit written comments if they cannot attend the session. Once the Board determines a suitable date, I will prepare a public notice to be published in the official Town newspaper and assist Connie with distribution of the Scoping document to all Involved/Interested agencies. After the scoping session, we can review the public input as well as any suggestions from Involved/Interested agencies, Planning Board members and its consultants and then develop a Final Scoping Document for adoption at a later Planning Board meeting."

Mr. Astorino: We need to set a date for the Public Scoping Session.

Mr. Bollenbach: Do you want to do this after the first of the year. We generally cancel the first meeting in January.

Mr. Astorino: Then it would be for the 2nd meeting in January.

Mr. Lipman: This is my client. I will not be available for the 2nd meeting in January.

Mr. Astorino: How is the 1st meeting in February? That would be the February 6, 2008 meeting.

Mr. Lipman: That would work.

Mr. McConnell makes a motion to set the Mountain View Estates Public Scoping Session for February 6, 2008.

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

Other Considerations:

1. **Wheeler Road Estates** – Letter from Pietrzak & Pfau Engineering addressed to the Planning Board, dated 11/6/07 – in regards to Wheeler Road Estates requesting a 4th 6-Month Extension on preliminary approval of a proposed 31-Lot subdivision (SBL #44-2-44.223). The 4th 6-Month Extension becomes effective on, 11/2/07.

Mr. McConnell makes a motion on the Wheeler Road Estates subdivision, granting a 4th 6-Month Extension on preliminary approval of a proposed 31-Lot subdivision. Preliminary approval was granted on 11/2/05. The 4th 6-Month Extension becomes effective on, 11/2/07.

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

2. **Masker Fruit Farm** – Town Board Resolution #R2007-303 Request To Participate – Agricultural Protection Overlay District – SBL # 53-1-20 & 35.

Mr. Astorino: John, what do we need from this?

Mr. Bollenbach: That is just for your information. We have already made a recommendation to the Town Board.

Connie Sardo: It is the Resolution from the Town Board that we just received the other day. A copy of the Town Board Resolution is in your packets.

Mr. McConnell: Thank you.

Correspondences:

1. Letter from Garling Associates, dated 11/20/07 addressed to the Planning Board – in regards to Black Meadow Club.

Mr. Astorino: That letter is in our packets.

Privilege Of The Floor For Agenda Items!!

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

Mr. McConnell makes a motion to adjourn the November 21, 2007 Planning Board meeting.

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

Mr. Astorino: Everyone have a Happy Thanksgiving.