

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday May 18, 2010. Chairman Alan Bell called the meeting or order at 7:30 p.m. Board members Dennis Rosenfeld, John Gunn, Tony Brenner, Bob Straub were present. Joe Zeidan and Stacy Olyha were absent. Also present was Kevin Donohue, alternate board member, Wanda Livigni, Administrator of Public Works, Walter Artus from Stormwater Management Consultants, Greg Bolner from Clark Patterson Lee, Rebecca Valk from VanDeWater & VanDeWater and Steve Gaba.

Mr. Straub made a motion to accept the minutes of April 20, 2010, seconded by Mr. Brenner and the motion carried unanimously. MINUTES ACCEPTED.

PUBLIC HEARINGS:

TACONIC CENTER – Proposed site plan located on Rte. 55 containing 14.58 acres (Grid No. 6460-02-9609601; 957922)

Mr. Ken Casamento of Page Park Associates appeared before the board. He said the project is located east of the TSP on the north side of Rte. 55, a 14 acre property they are looking to propose a phased project with a health center which is part of phase I, 20,000 sq. ft. and a 2nd phase to include an office building, bank and some retail. Stormwater is being designed to meet NYS DEC requirements, proposing a sewer treatment plan with a discharge to the creek and 2 wells on site for water supply to the facility. Both are undergoing review with the BOH and DEC.

Mr. Bell declared the public hearing open and asked for public comment.

Robert 18 Laurel Park Road asked the location. Mr. Bell replied Rte. 55 just east of the TSP.

Tracy Johnson of Velie Road said Velie Rd. is the primary access to Freedom Park which is one of the major parks the town uses and in an area where the town is trying to maintain open space, with an example of the potential buying of development rights on the Pearson farm. He encouraged the board to look at the screening from Velie Road in terms of light pollution and buildings would be considered in the final plans. Mr. Johnson pointed out the view from Velie Road he was referring to. He described the land and referred to white pine and trees and expressed concern for the clearing of the trees. Mr. Bell said the view he was referring to was the north and east side and Mr. Johnson said the other aspect of living on Velie Road he has the pleasure of trying to get through Freedom Plains every once in a while and said he has observed cars backed up to Velie Road and encouraged the town to have some planting along the front which is interesting in the summer, spring, fall and Winter when people will be stuck there and also encouraged the planning to be more than just Bradford Pears, but have some Evergreens and year-round interest.

Robert Geisler of 18 Laurel Park road asked about their own sewer plant and asked if it would drain into Sprout Creek and asked who would pay for it and if would be approved by the DEC. He asked about a wetlands there and trees coming down and was concerned with drainage.

Mr. Bell said the storm water management proponent will be included in the plan and subject to the approval of the board's consultants and experts. The sewage treatment will also have to be reviewed and approved by the town and subject to approval of the Dept. of Health in the county.

Mr. Straub made a motion to close the p.h., seconded by Mr. Donohue and carried unanimously. PUBLIC HEARING CLOSED.

Ms. Kelly Libolt said they had the traffic engineer present who could give a presentation with respect to the traffic.

Mr. Phil Greely of John Collins Engineers spoke. He said the location has been discussed. Due to the location relative to the Parkway and the volume on Rte. 55, as part of their traffic analysis of this section, they identified the need to widen Rte. 55 and to provide a left hand turn lane into the project for east bound traffic and added they've been working with the DOT on the plans and this plan which shows widening and left hand turn lane for traffic entering the site and then continuing the widening and transitioning before getting to the bridge over the creek. As part of this project, there is a strip of land they are giving to the state of New York, because they are widening all on the north side of Rte. 55 to accommodate these improvements.

The traffic study looked at peak hours and the volumes on Rte. 55 in the morning in excess of 1,300 vehicles today, total both directions and in the afternoon rush hour it's over 1,400, close to 1,500 vehicles already. They looked at projected growth plus projects in the town that are approved or anticipated to be approved and looking at the long term projections. Mr. Greely said they need to make this improvement and it will be done under a work permit with NYSDOT. The traffic study did look at the rest of the corridor, the studies on the east side extended from the Taconic Crossings project through Velie Road and over to Stringham Rd. and the near the high school. In terms of the amount of additional traffic from this project they are looking at roughly 100 peak hour trips in and out in the afternoon. Mr. Bell asked if the study was based on the full build out and Mr. Greely replied yes.

Mr. Greely said in terms of the corridor improvements, there are some other ongoing things to the west of this area especially in relation to the future town center project and he said they have coordinated all of this with the NYSDOT. Mr. Greely said with respect to Velie Road, they looked at the traffic volumes there today and in the future without this project and said that intersection is close to meeting warrants for a traffic signal. In talking to DOT, it's the type of location they will continue to look at because they want to see that the volumes actually materialize. He said his projections include about 10 projects in the town and in the surrounding area that would be adding traffic either to

Velie Rd. or on to Rte. 55 corridor and in discussions with the DOT they have indicated they will continue to monitor that. Mr. Bell asked about a traffic signal at this time and Mr. Greely said it was not being considered at this point in time. Mr. Bell asked about the letter from the DOT. Mr. Greely said there's a series of half a dozen comments relative to their detailed review of the construction plans. Mr. Bell said he wanted to make sure Mr. Greely had that comment letter.

KONDAS SUBDIVISION - Proposed 2-lot subdivision located on Freedom Road containing 141 acres (Grid No. 6462-01-191677)

Mr. Don Solomon, surveyor, appeared before the board. He said Mr. Kondas is cutting out 3 acres out of approx. 141 to include the 2 existing dwellings and a barn as it exists. He said no improvements are proposed and nothing is proposed to change except the 2 houses which they got a variance for, will be cut out from the farm.

Mr. Bell declared the public hearing open and asked for public comment. There was no response.

Mr. Rosenfeld made a motion to close the public hearing, seconded by Mr. Straub and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Bell referred to a letter from Pleasant Valley which stated that request the planning board take into account the wetland and buffer for potential impacts. Mr. Bell stated there is no development taking place. Mr. Bell said the letter requested that Pleasant Valley be kept informed with any subsequent applications.

Mr. Bell said Mr. Kondas was requesting some waivers. Mr. Solomon was not using the microphone, therefore his comments were not audible.

Mr. Solomon talked about metes and bounds on the farm. He said they don't have to deal with septic and wells.

Mr. Solomon resume using the microphone. He talked about another project very similar to this. He said they didn't improve or change anything, just got the building where Tomark used to leave their trucks and was then able to sell it as a separate lot. He said it was pretty much the same thing he was doing here.

Mr. Bell said they are asked to waive the requirements to show metes and bounds, waive the location of structures on the big farm parcel, expansion of the SDS, requesting the subdivision be DCHD non-jurisdictional to file only.

Mr. Artus explained this is a non-realty subdivision and the Health Department still needs to look at it and endorse it in that respect. Mr. Bell asked if that would exempt them to show an expansion, and Mr. Artus said that's up to the Health Department. Mr. Bell asked if the board has control how this is filed, the non-jurisdictional permission to file.

Mr. Artus said if it is fine with the Health Department, it's fine with the town. Mr. Bell said that's the Health Department's call, not the board's? Mr. Artus replied correct.

Mr. Bell talked about topo data and physical features and trees and asked the board for any objections to waving the above things given there is nothing proposed to be different. The board had no objection. Mr. Donohue made a motion to accept the waivers, seconded by Mr. Gunn and the motion carried.

Mr. Artus referred to his comment letter dated April 6th and added they need to address the comments on the plan and EAF and come back to the board for approvals. Mr. Bell told Mr. Kondas said when he addresses the comments, to come back to the board.

MOUNTAIN VIEW REALTY – Proposed Special Use Permits (Grading and wetland permit) located on Maloney Road containing 53.5 acres (Grid No. 6359-01-265780)

Mr. Eric Schlobohm of Insite Engineering was present. Board member Bob Straub recused himself from this application. The notice of public hearing was presented and the notice of adjacent property owners receipts.

Mr. Schlobohm said the project is located at 333 Maloney Road and consists of improvements to a single family residence. He said the property is in both the Town of Lagrange and the Town of Wappinger and include the addition of a two car garage, the remodeling of a barn and reconfiguration of a driveway. The project also will create several acres of hay fields for the cultivation of hay for harvesting and also proposes the removal of several dilapidated buildings.

Mr. Bell declared the public hearing open and asked for public comment.

Len Polhemus of 26 Laurel Park Road spoke. He said he's been before the board a number of times before. He said he is very familiar with the property and did receive his notice on Wednesday. He said he came to the town hall and met with the staff about it. He said this is about digging around until somebody catches us. Part of the wetland involved with this property, he owns, which he said he has been here many times trying to defend it. Mr. Polhemus talked about mother deer and fawns on his property as well as coyote. He said he years ago he built a bridge to defend this swamp so it didn't drain. He said he's been to the board a number of times in the past. He said if this was in fact, and added he was not saying that it is not, as it was just presented tonight, he can't help but wonder what a special use permit is. He thought it was a hardship thing and usually are issued before it happens and here they are, after the fact. Mr. Polhemus referred to planting hay and asked what happens in a couple of years when the applicant says let's segment this project. This is a realty corporation and they are known for building houses. Mr. Polhemus said when he sees something applied for by Mountain View Realty he has some suspicions if growing is really not the ulterior motive here.

Mr. Polhemus said there were other neighbors present who were interested in this situation. Mr. Polhemus said he is making every effort to defend the swamp and pointed

out the section he was interested in. He said he's been before the board many times and he has put facts in front of the board. Mr. Polhemus said if they want to knock down a few buildings and things like that, he didn't have a problem but if the ulterior motive on this is segmentation and Mountain View Realty building houses in there, he has a problem with that.

Beverly Olivett 8 Laurel Park Road said she was concerned that this was an old orchard property and said she thought there were a lot of laws about messing with the soil from that era because of the spray materials that were used. She said they were used heavily during the time the orchard was active and added she didn't know if that would affect anything that was grown on the property. She said there's a lot of rules about moving soil when some body wants to develop in an orchard concerning the soil and wanted to make sure the board was aware.

Mark Shadow of 197 Maloney Road said he is a new resident to that street, and a lifelong resident of the area. He talked about the water and noticed that on the side of his house that has the pond on it, that comes from the upper part of that street and flows toward the bottom, is a spot where all the animals are. He said it's the water and the marsh and the streams and ponds that is the most important part of your property. Mr. Shadow urged that whenever these issues come to the board, and if you have to develop that area, can't it be done on a part that is not wetland and set aside. Mr. Shadow stressed the importance of the wetland and encouraged that they use the dry land.

Mr. Shadow said he likes to live around here because of all the trees and woods. He said it's well with the board's means, when you first see drawings come in to be developed, why can't the town make them set aside 20% of each home parcel and leave it wooded. He said he understood there would be an enforcement issue. Mr. Shadow asked if setting up a certain percentage of land was possible.

Mr. Bell asked Mr. Shadow if his concern was the impact on wetlands on his property or the concern of wetlands on their property. Mr. Shadow said he mentioned that because he wanted to create a basis for knowing something about wetlands. He said he lived on the same street, 5 houses up so he knows how the water flows down onto their property. He's lived in the house for 5 years and the house has been there for 50 years and all the animals including deer, fox, muskrats, etc. gravitate toward the side where the pond is and water is because of that. He said that's why he is stressing the importance of the wetlands.

Mr. Artus said there are 2 wetlands involved – 1 is a town regulated wetland and the other is a town and federally regulated wetland. Mr. Bell said so it's Army Corps of Engineers. Mr. Bell said there is not a quick answer to the wetlands. He said various kinds of wetlands are regulated by the Army Corps of Engineers, the NYSDEC and the Town of LaGrange and which laws apply depends on primarily the size of the wetlands.

Mr. Bell said the wetlands are enforced by the board. Mr. Bell said the wetlands are protected if they are covered by one of these regulations. He said they could be small

enough that they are not covered by any. Mr. Bell said the ones that are covered by these regulations, typically you cannot do anything at all in the wetland and have buffer areas where you cannot disturb within a certain area of the wetland and that also varies in size depending on the wetlands and the size of them. Mr. Bell said when someone proposes any kind of disturbance or development in those areas we take the applicable laws and we ensure that the plan protects those wetlands in whatever way the law requires. Mr. Bell said they cannot fill them in at all. Mr. Shadow asked if somebody was watching over this, in this case.

Ms. Livigni said this application has nothing to do with putting any housing units in. Mr. Shadow said he understood that and Mr. Bell said it was on his list to cover that. Ms. Livigni said she does the inspections as the Stormwater Management Officer and the Stormwater Consultant will be making trips there to monitor compliance. Mr. Bell said all of what he was just discussing is what happens when somebody applies to do something, tells us what they plan on doing and the board is involved in the Planning process in making sure that the plans are approved and that the laws are adhered to. None of that process has anything to do with what people may do without applying, telling or letting the board know. Mr. Artus said that is an enforcement issue and has nothing to do with this board, because they have no enforcement power, just approval of plans. He said there are people who have enforcement responsibilities in the town but the board isn't one of them. Mr. Shadow asked if they knew if this wetland needed to be taken care of. Mr. Bell said Mr. Artus indicated that on that property there is a wetland that is protected by Federal law. Mr. Artus spoke. He said both wetlands are town regulated wetlands and one is also protected by federal law. Mr. Artus said there is a state DEC wetland on another portion of the property and was not disturbed.

Mr. Shadow asked if it was still possible to fill these in. Mr. Bell said it is not legal for them to fill them in. Mr. Shadow brought up his earlier comment about setting aside a percentage of each home parcel. Mr. Bell said the town has a provision in the code which gives flexibility to allow the board to request that developers dedicate a significant portion of property to open space and it is something they do fairly commonly. Mr. Bell said he would not comment if they would go that way in this case for the simple reason that we don't have a proposal for building any houses at all. He said the proposal is to build a garage and knock down some buildings and plant some hay. If a specific proposal came in to build houses on a lot this size, the board would consider it and act on it in a way that the board does on other. Mr. Bell said it's fairly common for the board to ask that development be concentrated to limit the impact on open space and to preserve as much as possible.

Ms. Valk said the town has no authority to say keep the trees forever unless they give some sort of benefit and they sign a conservation easement, which is the scenario Mr. Bell is referring to or the town pays them for it. Ms. Valk said the board can't restrict somebody without them getting a value back and added that was New York State law.

Mr. Bell said typically they would come up with a plan they build to the existing code he could put 23 houses on this property and the board says if you leave half of it as open

space we will let you build 30 on smaller lots than is normally allowed. Mr. Bell added this was an example of a hypothetical situation. Mr. Bell said the board would give the applicant a little more concentration leaving half the property perpetually open. He said that's typically how those things go. Mr. Bell said they are negotiated and under all circumstances the applicant is always within his rights to build whatever is legal according to the code. Mr. Artus said the zoning is 40-60-80. Mr. Shadow said that everybody in this room who lives in this area loves it because of what we see, lakes and woods and urged the board to try to keep it open. Mr. Bell said many of the board members have walked around on that property extensively and have had several applications before them in the past to build houses there and the board was more than aware of the challenges related to the wetlands and the stormwater management and the life and his observation is those are the issues why those fields are still vacant now. Mr. Bell said it's because there have been substantial issues in the past that haven't been resolved by the previous applicants.

Mr. Shadow said at the top of his street they put in another development and the first thing they did was cut down all the trees and that leaves a big gaping hole and nobody wants to see that and nobody wants to see that. He again asked the board if they limit how much is taken out before the houses go in and said it would be a good compromise for everyone that lives around here. Mr. Shadow said he thought it was in their means to say to keep part of the land natural. Mr. Bell said those are discussion that the board has on almost every application that comes in front of the board, including trees being cut down and removed. Mr. Bell said it's not something that the board can please the neighbors 100% of the time and added that it is not something that the board does not pay attention to.

Tracy Johnson of Velie Road said he presumed since there is a wetlands buffer permit being requested that there is going to be disturbance in the wetlands. Mr. Artus said they need a wetlands permit because there was disturbance within the wetland buffer and they need to mitigate that disturbance which is one of the reasons they are before the board.

Mr. Johnson said the ideas of the buffer was to maintain natural vegetation around wetlands and is beneficial for them and there are numerous studies about that in terms of maintaining water temperatures, etc. and that he was curious to know what is there, what was there and why hay will be a beneficial aspect to the buffer. Mr. Alan asked if the proposal was to grow hay in the buffer of the wetland. Mr. Artus said no, the proposal is to restore the disturbance that has occurred in the wetland. Ms. Livigni brief Mr. Bell. She said Mr. Artus became aware of this by the town of Wappingers which is half of this parcel, maybe more is in the town of Wappingers. Ms. Livigni said the Building Inspector went out there to do an inspection on footings and realized that everything had been disturbed, everything that had been cropped, everything down to the front wetlands to the pond portion. Ms. Livigni said there has been grading and machinery out there and dirt pushed into the wetland. She said in LaGrange there was over a 2 foot change in contour and culverts put in and the driveway was replaced. She said the new owner was not aware of the town's code or state laws. Mr. Artus called her out there and rather promptly the owner went out and complied with what Mr. Artus and she discussed.

There was an Order To Remedy issued on the parcel, the owner put up some erosion sedimentation controls and hired an engineer promptly.

Mr. Bell said this is the enforcement aspect he was talking about earlier, that the board has nothing to do with. Ms. Livigni said part of that Order to Remedy was for the owner's professional to come in front of the board for a Special Use grading permit and for a wetlands permit because they had both been disturbed.

Len Polhemus, 26 Laurel Park Rd. asked wasn't ignorance to the law no excuse. Ms. Livigni replied hence the reason why the Order to Remedy was issued and the owner has been compliant with all it. Mr. Polhemus said whatever the decision is, it's always within the guidelines and the law and so forth. He referred back to the Parker Subdivision. Mr. Bell said he didn't want to talk about it. Mr. Bell told Mr. Polhemus to stop talking about that. Mr. Bell told Mr. Polhemus he could talk about the swamp and the proposal being reviewed and added that he was not interested in a history lesson in something that happened when most of the people on this board were not here. Mr. Polhemus said a good number of them were. Mr. Bell warned Mr. Polhemus that the Parker Subdivision would not be discussed.

Mr. Donohue addressed the Chairman and stated as a point of order the board has to stick to the topic of Mountain View. He added he was a lifelong resident of the community and would be happy to talk to Mr. Polhemus after the meeting, but right now he told Mr. Polhemus to stick to the topic of Mountain View.

Mr. Donohue suggested to the Chairman if Mr. Polhemus is out of order, make a motion for him to sit down. Mr. Bell told Mr. Polhemus to stick with talking about the current applicant and warned him to stop getting carried away with things that happened 10 years ago and a swamp that is not on the property. Mr. Bell asked Mr. Polhemus to keep on the subject before the board and stop talking about Parker. Mr. Polhemus said he is addressing the proposal that hay does not pay the bills and he is concerned and is trying to make it everybody's vision that this property is involved in a major state swamp. Mr. Bell asked Mr. Polhemus if his concern was that this proposal was an incremental step toward some other project. Mr. Polhemus said exactly. Mr. Bell told Mr. Polhemus just for the record, he made that clear the last time he spoke.

Greg Garrafalo – trustee of the Garaffalo trust spoke and asked if this property was adjacent to the horse farm. The answer was yes. Mr. Garaffalo asked if the Town of Wappinger has taken a position regarding this application. Mr. Artus said he has informed the Town of Wappinger town engineer relative to what is going out there and in accordance with the town's wetland ordinance we are required to submit materials to the Town of Wappinger Town Clerk. Mr. Artus said the Town of Wappinger Code Enforcement Officer has also been out there and give directives to the owner of the land. Mr. Garrafalo asked the Wappinger Code Enforcement Officer's position regarding this project. Mr. Artus said he was not aware of their current position and added the only thing he was aware of is when they first met out there with him, certain directives he gave to the owner. Mr. Garrafalo said a lot of his concerns were addressed by the other folks.

He said he was downstream from this project and they've been having water drained on their property since Bray Farm went in. He said they dug up Maloney Road and dug a trench right across the front of it all the way into his property which connects down into the Town of Wappinger. Mr. Garrafalo said anything that is going to increase waterflow across his property would not make them happy. He said he's been the trustee for almost 20 years and it continues to occur from all directions and affects the value of his property and the use as a horse farm. He said they have a barn that's closest to Maloney Road and they get flooded there. He said they've owned the property for the last 45 years and it's the last 10 years they have been getting flooded and he thought a lot of that has to do with what's going on with the development upstream. Mr. Garrafalo repeated his concerns for increased water flow, erosion as well as the issue of chemicals in the land.

Ms. Livigni said Mr. Artus did request pre and post disturbance runoff calculations as part of the submission to the board so that has been considered.

Mr. Bell said in each of the previous applications for development, the Town of Wappinger has made it clear there is an existing stormwater management issue in their town and have made it clear to the board more than once and their position is an extra cup full is unacceptable.

Robert Geisler 18 Laurel Park Rd. said he hears a lot of machinery during the day. He said the wetlands which is adjacent is 250 acres and this applicant has 53 acres and he said he wants to clear out some acreage to plant hay and asked how much acreage he meant. Mr. Artus said that information was not submitted to him yet. Mr. Astuni, applicant said he believed it was about 17 acres. Ms. Livigni said she believed it was farmland, it wasn't forested. Ms. Livigni said they had to put in erosion sedimentation control devices and it was her understanding they are planting crops, which was the noise Mr. Geisler was hearing. Mr. Schlobohn said the 17 acres proposed for hay is both in the town of LaGrange and Wappinger. Mr. Schlobohn said the property is a total of 87 ½ acres. Mr. Geisler asked the reason for the hay. Mr. Astuni replied originally they were completely over grown hay fields and they restored them. He said he was not here for a subdivision application. Mr. Bell said he thought people knew he was not here applying for a subdivision tonight. Mr. Geisler said he's lived here for 46 years and it's an apple orchard, he said he didn't know where this hay field came from. He said it's overgrown and a forest now because it hasn't been farmed in years. Mr. Geisler quoted the code, Chapter 124 Freshwater Wetlands – “no permit is required for the following activities within a wetland provided they do not constitute pollution or erosion hazard or interfere with proper drainage, do not require structures, grading fill, draining and dredging.” which he felt the applicant was doing. Mr. Geisler said he would summarize that there was erosion. Mr. Geisler asked what happens in the winter when the hay goes down and it is all bare, they will have 17 acres of nothing.

Mr. Geisler asked about a wetland permit, which means he can disturb the wetland and asked if that was correct. Mr. Artus said to mitigate the area that was disturbed already within the wetland buffer. Mr. Geisler asked if he needed the permit to restore back the way it was. Mr. Bell said yes and added that in order to do any kind of work in the

wetland you need a permit and the situation they are in is they did some things without a permit and now they need a permit to mitigate and fix what they did according to the instructions of the town. Ms. Valk clarified "work in the wetland" she said when they said wetland, it actually means buffer, not in the actual wet area itself. Mr. Bell asked if it could be either. Ms. Valk said it is usually very difficult to get a permit to work in the wetland itself. Mr. Bell said that was an important clarification. Generally speaking when people are asking for a wetland permit in the town, they are asking to do something in the buffer area not in the wetland itself. Mr. Geisler asked about the Special Use Permit. Ms. Valk said both the wetlands permit and the grading permit are special use permits. In the state of New York a special use permit is a use that's deemed to be compatible in that zone but is subject to review to address certain concerns as laid out in the zoning law. Mr. Bell added that which concerns are being addressed depends on the use being applied for. Ms. Valk replied yes. Mr. Geisler asked what he was applying for. Mr. Bell said the wetlands was to mitigate the issues talked about and the other permit is a grading permit needed if you are going to disturb more soil that 2 feet in contour or 100 cubic yards. Mr. Geisler asked if this all was for a 17acre hay field. Mr. Bell responded it could be for the driveway or the new garage. Mr. Geisler asked if they disturbed the pond. The reply was no.

Mr. Livigni clarified that hay, much like grass, would be a way to stabilize the soils, the root structure would remain, you just cut it and don't rip it out of the ground.

Mr. Geisler asked if the owner of the property lived there. Mr. Astuni replied weekends only. Mr. Geisler said he was informed that someone was going to make trails for four-wheeling, Mr. Astuni said there is a driveway with a roadway going to the barn. He said there was no access going to the barn that was there, so there is a driveway going to that and to the house. Mr. Geisler said he supported all the other views against the project and said he didn't think they should disturb anything back there and didn't think restoring anything would help and added that he couldn't believe that 17 acres of hayfield would be profitable. Mr. Geisler said it looks like a front to do something to later on develop the property and they'll have their foot in the door which he didn't want to see happen.

Mr. Bell said any proposal to actually do a subdivision would be a completely different, unique and separate application that would be handled as such and it's hard for him to imagine that anyone on the board would view an application to put in hay fields as some sort of foot in the door to build houses. He said he didn't understand any relationship between the 2 of them at all. He said he understood the suspicion that what is being applied for may not be sincere because he's heard those suspicions a number of times on a number of projects over the years, but it is important to understand that there is no relationship between the 2 and the approval of one thing does not necessarily lead to the other at all. Each one is unique and different. Mr. Bell gave an example of where that was not true where somebody has a 150 acres of land and if they came in for a proposal to put up 95 houses, the code would require them to put in sewers and town water so instead they carve off a section of 10 acres and come in and build 4 houses and then wait 2 years and come back. He said that is a completely different thing and the board is on guard for that but building a garage does not strike him as a first step to building a

housing development. Mr. Geisler said hay fields just seems like a ridiculous thing. Mr. Geisler said what is the applicant going to do, cut the hay himself? Mr. Astuni replied there is no hay in Babylon. Mr. Geisler talked about the water issues. Mr. Bell repeated that any proposal that adds a cup a water a year to the Town of Wappinger is unacceptable from their perspective.

Mr. Johnson said he hoped the mitigation foliage will be suitable for a wetland area and not salt water hay.

James _____ 17 Laurel Park Rd. spoke and said his wife sent him because she thought they were building a development here and cut a road through Mr. Geisler's yard. He said obviously that is not applicable here. Ms. Valk said to check that with the Highway Superintendent if it's a town road. Mr. Gunn said the safety committee is putting together something coming out on May 26 and told Mr. if he wanted to show up for it, it had all the signs and everything they would be putting out there.

Mr. _____ said this was his first meeting he ever attended and was stunned at all the details you have to pay attention to and commended Mr. Polhemus for sticking up for what he believes in.

Mr. Polhemus spoke again. He addressed Mr. Astuni and said he was his neighbor and if in fact what he was proposing is what he is really is doing, welcome to the neighborhood. He said he's been threatened by houses for a long time.

Mr. Artus' recommendation was to adjourn the public hearing rather than close it because there was not a complete application. Mr. Bell asked Mr. Artus' his recommendation. Mr. Artus' recommendation was to adjourn the public hearing because the board did not have a complete application. He said the application was not complete as far as the town's wetland ordinance was concerned. He said he didn't have an EAF, and added a submission was made the day before the meeting and because this is bordering the town of Wappinger, the whole application, when complete, has to be sent to them.

Mr. Gunn made a motion to adjourn the public hearing, seconded by Mr. Straub and the motion carried unanimously. PUBLIC HEARING ADJOURNED.

Mr. Bell commented on the public hearing process. He said the purpose of the public hearing is to allow the people to voice their concerns as opposed to making sure they are all addressed and answered this evening. It is purposely put as an early step in the process so the board is aware of public concern so they can take them into account all the way through the process. The way the process is designed by the state of New York, you don't get the opportunity to speak at each of the subsequent meetings all the way through the process. The public hearing is where you get the chance to voice your concerns and after that the board takes them into account. They are required to answer all of the concerns in writing to the board and ultimately the board makes the decision as to whether they think the responses are adequate or not.

Ms. Valk commented and reiterated that these meetings become dysfunctional if the chairman's directions are not adhered to. Under the open meetings law of the State of New York, the Chairman controls the process of the meeting and asked if the Chairman makes a statement, it be adhered to or else it becomes chaos and people can be removed.

GAMBINO WETLANDS PERMIT – Proposed wetlands permit located on King Drive containing 5.59 acres (Grid No. 6260-02-831714)

Mr. Tom Gambino appeared before the board. Mr. Gambino presented the notice of public hearing and adjacent property owner receipts. Mr. Gambino said he was seeking to construct a 3-car garage attached his residence and would be consistent with the present structure of the home. The house is set back about 500 feet from King Drive so that it's not visible from the roadway but it would be consistent with the design. The construction would be on the east side of the house and would be going over the present driveway pad so they wouldn't be disturbing anything new but rather constructing on top of the existing pad and going upward. Ms. Livigni said Mr. Gambino is in front of the Planning Board because he wanted to do the addition and when he spoke to the Building Department and it was discovered that they are actually in the wetlands buffer, the house was constructed prior to the ordinance and because they are putting the addition in the buffer they are applying for a permit. Mr. Bell said the garage is being built right over the driveway pad and because he's modifying it and it is technically in the wetland buffer, he needs a permit, but he's not actually disturbing anything that hasn't already been disturbed.

Mr. Bell declared the public hearing open and asked for public comment.

John Jacobs of 122 King Drive spoke. He said as he was moving in to this development, this house was being built which was about 8 years ago. He said according to his maps from 1959 the house was actually built in the swamp land and they brought truck loads of soil in and after they moved in, they still brought truck loads of soil because they had problems with water in the area. Mr. Jacobs said he spoke with the Highway Superintendent because at this point anytime there was rain in the neighborhood the water could no longer flow into the wetlands. There are 3 houses in this area, and when we get this rain our bathrooms are shut down because the septic aren't working. He said the sewer drains are never empty and are always full of water even through the drought this past summer, they are always full. Mr. Jacobs said there are plenty of kids in the neighborhood. The Highway superintendent said they do put tablets in there to protect against mosquitos and west nile virus and added he never saw them. He said they mark them but he never sees the marking. Mr. Jacobs said there is an existing problem that was caused due to this construction. He was asking for everything to be remedied. He said one thing Mr. Kelly did take care of is the drain from the sewers. There is a drainage pipe that heaved and he looked at it and said it wasn't built the way it should have been and added Mr. Kelly said it should have been 2 feet lower. Mr. Jacobs clarified he was referring to storm water not sewage.

Mr. Jacobs said they lowered the pipe, backfilled over the pipe and they now drain. He said it kind of works but probably out of a whole year he can use his downstairs bathroom maybe 3-4 months out of the year. He said the other neighbor got tired of it and blanked off his downstairs bathroom and a 3rd neighbor has the same concern.

Mr. Jacobs asked prior to doing any addition construction on the property, which was previously swamp land, not buffer, and now it could be considered buffer, that needs to be remedied. Mr. Jacobs asked how were they going to be able to get rid of this water since the swamp land was no longer there.

Ms. Livigni said this house was built with the ordinance in place and somehow it was missed when this property was constructed. He said the Building Department brought this to her because there was nothing in the folder. She said she got a call from a resident on King Drive and she said she went out in the rain. She said on the site plan that was approved by the Health Department on May 6, 1999, it shows a drainage ditch, a pipe, some catch basins on a neighbor's property. She said she saw it is in place and is functioning. She said she didn't see any problems out there with flooding and added she knows it is a low area and said there were problems there regardless of this property. She said she wanted to make the board aware as far as she can tell from what they have, that is the only pipe out there and drainage ditch that this site is required to have.

Mr. Jacobs said the sewers are functioning but they are still above the septic table. Mr. Bell said the water table has increased and Mr. Jacobs said because the water can't drain properly. Ms. Livigni said so you guys would like to connect to municipal sewer and added we need to talk. Mr. Jacobs said at the time his septic was 4 years old and now he has to put a brand new septic in and every 10 years he will have to because when he pumps his septic out, it's only 1,000 gallon tank, he takes 2,000 gallons of water out of it because it cannot drain. The drains need to be further down into the ground, the pipes need to be further down into the ground so it can remove the water and that's going to happen along the whole land and the whole trench.

Mr. Bell introduced some letters from adjacent property owners (see attached)

Mr. Gambino spoke. He said the property is about 5 ½ acres, maybe 6 and almost all of it is swamp and added there is no disturbance to the wetland area at all. He said his septic tank works fine, he just has to maintain it. He said the overall majority of his property is wetland and is not being disturbed at all by this application.

Mr. Jacobs spoke again. He said he was very happy that Mr. Gambino's septic worked well, his doesn't and it is due to the house Mr. Gambino was residing in.

Mr. Bell addressed Mr. Jacobs and stated his concern was registered and the board would consider it in the process. Mr. Jacobs asked what happens after this and would there be another public hearing. Mr. Bell said he doubted there would be another hearing. Mr. Gambino is required to address the public hearing comments in writing to the board and the board will review the response to determine if it is adequate. Mr. Bell said

concerning the issues that have been alleged to have happened 8 years ago, he wasn't sure what to do and if at all it relates to this. Mr. Bell said what Mr. Gambino is proposing is clearly not going to make it worse.

Ms. Valk said when the subdivision was approved there was review and Health Department at the time, that level of review does not occur at the time the building permit is requested for a single family home. The State of New York, you cannot divert additional water onto somebody else's property unless you get their consent. That would be a civil matter to actually have experts determine whether more than what was there before is now being diverted. Mr. Bell said the board does not have the authority to ensure that the pre-existing condition is remedied before the board approves this application. Ms. Valk agreed, the pre-existing condition is the pre-existing condition when you have applications the environmental affects look at how that application is increasing it, not what is already in existence. Ms. Valk said you cannot deny an application because there's already a lot of cars on the road, you have to look at how many additional cars that application will cause. She said it's a scenario for a similar situation.

Mr. Bell said if his application stated that Mr. Gambino was going to fill in more wetland than that would be a different matter. Mr. Jacobs clarified - currently there is a slab and there will be no construction that will be moving earth, bringing in earth. Mr. Gambino said they are not filling in wetlands, they will, of course, have to dig over the existing pad, put in footings and build up. Mr. Gambino said the house is parallel to King Drive and if you are facing the house, the garage would be on the left, going toward Titusville.

Mr. Jacobs said as long as it is not going to affect any of the existing drainage, they can't have anything worse so if he is not going to obstruct anything going along the channel that goes around his house so that things can down through, then he guessed there was not going to be any kind of issues but he still had a concern and said he had to figure out how to remedy it. Mr. Jacobs said he's been talking about this for the past 8 years and he has had Mr. Kelly out there to look at it and he said everything was working the way it was supposed to, but his bathroom aren't.

Mr. Straub made a motion to close the public hearing, seconded by Mr. Donohue and carried unanimously. PUBLIC HEARING CLOSED.

PIOTR GUMPER – Proposed Special Use Permit located on Noxon Road containing 2.03 acres (Grid no. 6360-04-714214)

Mr. Bell said this is for an accessory apartment and asked if it was safe to assume that the Building Inspector has reviewed this application for compliance with the Town Code. The answer was yes.

Mr. Gumper from 575 Noxon Road and explained he has 2 dwellings on his property. He showed the board both dwellings. He said he is an artist/painter and the 2nd dwelling used to be his studio. Three years ago his son became unemployed and moved back and

they decided he would live in the 2nd structure. It was built in 1986 and used to have a special permit but when they bought the house 14 years ago, they lost it. Mr. Bell asked about accessory apartments for a 2nd building on a property. Mr. Bell said it was his recollection it had to be attached, and said this would be an application for a secondary accessory structure as opposed to an accessory apartment and accessory structures don't require the board to be involved in the process, as he recalled.

Mr. Donohue said there was something a long time ago in the code about building a house for a parent. He said at that time it didn't go away and added he didn't know if it was in the code currently. Mr. Bell said if it is not in the code currently then he can't apply for it.

Mr. Donohue he thought there was something and added he didn't think this section applies to this. Mr. Bell said he wasn't sure the accessory apartment applies at all. Mr. Donohue said he thinks the legal department has to look at this because you have 2 single families on one property. Mr. Bell said which you can have but it's not called an accessory apartment.

Ms. Valk quoted Sub C under 240-52 – a special permit is required to create a detached accessory apartment in existing gate houses, garage, barns or similar accessory structures and there's some conditions there. She said she knows she looked at this before because it doesn't say existing therefore construing the code against the town, existing on the date this code was adopted in 2006. Ms. Valk said you cannot construct a new structure. Mr. Bell said they are creating a detached accessory apartment in an existing structure and Mr. Bell added the square footage is 650 sq. ft. substantially smaller than the other one. Mr. Donohue said it does exist so he's not creating it from an accessory structure. Mr. Bell said they are creating a detached accessory apartment in an existing structure. Mr. Donohue said the dwelling already exists. He said that's the point he's trying to make, it's not a shed going to an apartment. Ms. Valk said it's not whether or not the home is existing it's whether the accessory structure is existing. Mr. Donohue said he is questioning does it need a special use permit, it exists as a dwelling. Ms. Valk said yes, it exists as a dwelling, but you are creating an accessory apartment. It may be a dwelling, but now it's becoming an apartment. Mr. Donohue said he thought it meant if you were creating it from a barn or a shed or something that existed as a structure on the property.

Mr. Bell said that reads like it's close enough to being right so he would defer to the person downstairs who makes these determinations. Ms. Valk said she didn't know if that complied with the zoning or if it is grandfathered, she had to do a full analysis of the records, so she said she preferred the special use permit be issued. Mr. Bell agreed and added the interpretation of the building code is Ken's job. He thought accessory apartments were strictly all in one structure so he wasn't going to get into an argument about whether that applies. If that's what he determined, then that's what he does.

Mr. Bell opened the public hearing and asked for public comment.

Janet Figa of 233 Smith Road spoke. She showed the board photos. She said she considers this a 2nd house, it's very close to her backyard. Currently they have lived there for 2 years and for 2 years his son has resided in that structure, which she complained about a few months ago in writing and she said she was told it was illegal, which is why Mr. Gumper is here. She said the problem she is having is she has an autistic 4 year old and a 2 year old daughter and she is in her back yard all the time. She said the son makes it a point to stand on the deck of the accessory structure and the son is out there quite often throughout the day smoking every 15 minutes and she is an asthmatic and she gets a whiff of it all the time. She complained that she feels uncomfortable in her own yard. She said she pays lot of money to live there, 2 acres, all wooded and she lives on a sloped property and the only flat area is in her back yard which is right up against that structure. She said it's an eyesore, electrical lines stapled to the trees from one house to the other. Ms. Figa said she opposes this and said every window, her bedroom, bathroom and kitchen and dining room all face this house. She said she has video of people coming in and out of there just to prove this has been going on for 2 years.

Mr. Bell asked about the power lines in the trees. Mr. Brenner asked if this house had it's own septic and well. Mr. Gumper said it was piped to the main house. Mr. Brenner asked if it was Board of Health approved like that. Ms. Livigni directed Mr. Brenner to the file attached to the application the DOH approvals for a 3 bedroom septic design. She said the house in that application is supposedly a 2 bedroom and the cottage is a 1 bedroom.

Mr. Brenner asked about both houses sharing the same well. Ms. Livigni said she didn't look into the well. The board discussed the issue of the Board of Health approval and the 3 bedrooms. Ms. Livigni said that's what was shown on the paperwork.

Ms. Figa said Mr. Gumper put a fence up and afterwards he did a lot of clearing of brush and even though the fence comes up, it blocks them more. She said the son is up high so he can see down into us. She said they can't really see the lower area anymore.

Ms. Figa said this is very close to her children's swing set and added she didn't feel like she was having her privacy in her own house. Mr. Brenner asked about the power to the house. Mr. Gumper said the wire going from his house to his son's was internet connection. He said the power is in the ground. Mr. Gumper said what Ms. Figa said was her own opinion of course, but basically this is some kind of personal feud between him and them. He said he's lived there 16 years and they have only been there 1 ½ years. Mr. Gumper said they built a garage 20 feet from his property instead of 30 feet required. He said he didn't object.

Louise O'Hanlon of 233 Smith Road spoke and said she felt his house was a fire hazard, it's illegal. Mr. Bell said the house was not illegal. Ms. O'Hanlon said it was very close to their property, the steps come down and she's out with her grandchildren and the son is always slamming the door and she feels uncomfortable. She said he gawks over the fence. She said they had to take the steps down from their garage because Mr. Gumper had no privacy, what about her privacy.

Ms. O'Hanlon said his house is an eye sore and fire hazard.

Ryan Figa of 233 Smith Road said when he bought the house he was told no one lived there. Mr. Bell asked who told him that. Mr. Figa replied his realtor and the previous owner. He moved in December, 2008 and started construction of his garage in Feb. 2009 and that's when he saw the son coming out and added he never would have bought the house if he knew someone lived that close to him. Mr. Figa said his backyard is right there and he cares about his family, not what Mr. Gumper does on his. He said he built a garage asking for a 10-foot variance. He started it in Feb. 2009 and completed it last year. Mr. Gumper then came to the town complaining I was too close to his property and he had to go to the ZBA. Mr. Figa said Mr. Gumper waited until the garage was done to complain that he was 3 feet closer. He went in front of the ZBA and had to rip down his stairs and take out a door because Mr. Gumper wanted his privacy. Mr. Bell asked if the ZBA made him do that, and Mr. Figa replied yes. He said he can't walk around his backyard and he always has to make sure his blinds are closed.

Mr. Figa said he has feuded with Mr. Gumper and said Mr. Gumper provokes him until he gets a reaction, which Mr. Figa said he doesn't get from him. Mr. Figa said he had to take his doors out of the garage, now he wants Mr. Gumper to take out his windows.

Mr. Figa said his house is 1500 feet away from his and he said Mr. Gumper and his son are so concerned about what goes on in his backyard. Mr. Figa asked if this gets approved tonight. Mr. Bell said we'll see.

Mr. Figa talked about the BOH and the approval for 3 bedrooms, but what about 2 houses on 1 property for a septic system. Mr. Bell said septic systems are calculated on number of bedrooms because of the correlation between bedrooms and the number of people.

Mr. Brenner said this Health Department approval is for the original house in 1983 and the original house had a 1,000 gallon tank and it's good for a 3 bedroom house and if you only have a 2 bedroom house, it doesn't mean you can build another 1 bedroom house. He asked where the approval was for the 2nd house. Mr. Bell asked when the 2nd house was built. Mr. Gumper replied the same time the first house was built.

Mr. Gumper said in 1984 2 brothers built 2 houses for themselves, one is close to Mr. Figa's property and main house. Mr. Gumper said that is why approval from Dutchess County Health Department is for 3 bedrooms because main house had 2. Mr. Brenner said he understood but it doesn't say it's for 2 separate houses sharing one septic.

Mr. Figa showed the board something on the survey. He said Mr. Gumper put a spot light on the back of that house that shines down on his property at night. He said this man has called the police on him numerous times. Mr. Figa said Mr. Gumper went to the town and complained that the garage I built was to create an apartment. He had to reconfigure his entire garage and rip down his stairs that was just going to be used for storage.

Mr. Figa said if has to comply with code why shouldn't Mr. Gumper. Mr. Bell asked Mr. Figa if he was suggesting that Mr. Gumper's structure did not comply with theh code. Mr. Figa responded – look at it.

Mr. Bell said the purpose of the public hearing process is to be able to raise concerns which the applicant has to address to the board and then the board determines whether the responses are satisfactory. Mr. Figa said he had to comply with the code when he went to the ZBA and so should Mr. Gumper. Ms. Valk said Mr. Gumper does not have to go to the ZBA and Mr. Bell added that Mr. Gumper may or may not have to prove that an existing house meets current building code and added his guess was he won't. Ms. Valk said if there is a concern about the safety of the building a request can be put into the Building Inspector.

Ms. Livigni said if there is a question about the Department of Health approval, the Building Inspector can look into that.

Ms. Valk recommended Mr. Figa contact the Building Inspector about that because the board has nothing to say about that. Mr. Figa responded they already know and said he was told he had to go through the Planning Board. Ms. Valk asked as far as getting the building inspected? Mr. Figa said it's a circle, he's made a complaint and nobody has come out there. Mr. Bell said they would fix that.

Mr. Figa showed the board the pictures. Ms. Valk said the building doesn't have to meet the 2006 code. Mr. Bell said that something built 25 years ago doesn't have to meet current code to change a use. Mr. Bell told Mr. Figa his concerns were duly noted.

Mr. Donohue asked if the pictures were submitted to the town for the file and asked for the date of them. Ms. Figa responded October/November of 2009. and the pictures after the fence were taken this spring.

Mr. Straub made a motion to close the public hearing, seconded by Mr. Donohue and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Valk said as you now this is a Special Use permit application which means if the applicant satisfies the criteria in the code the board has an obligation to issue the permit. It sounds like the Department of Health issue may still be out there pending which most likely is a requirement of the code that it has to have that approval. She said some of the other issues that have been raised are not issues that the board has the ability to regulate, for example, smoking, which this municipality has no power to regulate, but the board does have the authority to put on some reasonable conditions to the permit and if there were some plantings and other trees removed, even though it will take a while for the trees to grow, it may be a reasonable condition to require some plantings and other things to be put in. She said it's the only way there's going to be some sort of buffer between the 2 properties.

Mr. Bell said from looking at the Department of Health approval that the map shows a single house on the property, not 2 and the highlighted area says these specifications are designed for a 3-bedroom house so it appears to him the Board of Health approval is for a single dwelling and at a minimum the board will need a ruling from the county whether this is adequate or not. Ms. Livigni said it is her understand the applicant can hire an engineer who makes that certification. Mr. Bell said the Board of Health is for a single home. Mr. Bell said if an engineer certifies that it is adequate for the 2 houses, then they don't have to go back to BOH. Mr. Artus replied yes. Ms. Livigni said the Building Department normally requires an approval from DOH that is valid for the current conditions or a letter from a professional engineer certifying that it is adequate to serve it. Ms. Livigni said she's just saying that's what has been done.

Mr. Bell said we need that clarified, an engineer's certification that the existing septic is adequate to support the 2 homes because the approval we have is for a single house, there was a statement that electrical wiring may be attached to trees, which strikes him as a code violation and a safety issue that he would like the Building Inspector to verify. The applicant says it's not electricity, it's internet, but he would like someone to verify that because if it is electrical power connecting the houses, that's not legal and we don't approve changes to things that are not allegedly in violation of the code. Mr. Bell asked the board's opinion on screening. Mr. Donohue said he would like to offer with the sewage disposal system, is it a legally created dwelling unit and if so, it will have a CO, which if it does, it will have legal sewer, legal water and all those issues we discussed. Mr. Bell said so if there is a CO for both of the buildings, then by definition they are legal. Mr. Donohue said it's legally established within Lagrange. How it got established, it could have been under another Special Use Permit under another zoning code so he recommended and offered a motion of supplying more information to the board of its legal status, sewer and water, electrical wiring to the house, adequate parking, adequate buffering from the neighbors. He said there could possibly be setback issues, encroachments, so he thought there is an investigation that needs to happen to say the structure is legally in conformance with zoning before we can proceed with issuing a Special Use Permit and then attaching conditions to it.

Mr. Brenner asked Mr. Gumper if he had a CO on the 2nd house. Mr. Bell said let's not ask that, let's ask the Building Inspector. Mr. Bell asked the board if there was any objection to what Mr. Donohue just proposed. The board agreed with his proposal. Mr. Rosenfeld made a motion to that affect, seconded by Mr. Straub and the motion carried unanimously.

Mr. Bell asked Ms. Livigni if she understood that the board was asking Mr. McLaughlin to re-investigate and give the legal status of this. He said he didn't want to approve an accessory apartment for something that might be illegal. Mr. Straub said there should be CO's. Mr. Bell agreed, but there was a lot of issues that needed evaluating.

Mr. Donohue said there could be variances, past Special Use Permits with past conditions that the board should know about.

Mr. Gumper asked what his next step was. Mr. Bell said his next step was to contact the Building Inspector to find out the status of his investigation into these issues is. Also Mr. Bell told Mr. Gumper he is required to respond to the concerns raised tonight in writing to the board. In the meantime, he should meet with the Building Inspector to investigate some of these things. Mr. Bell said to respond to the comments and concerns after the board has finished their investigation they would contact Mr. Gumper about the next step.

Mr. Figa asked how long Mr. Gumper had to respond to all this. Mr. Bell said this is different in some way from Mr. Figa's situation with the ZBA. Mr. Bell told Mr. Figa the question to ask the enforcement officer is how long does he have to finish this process. He can't come before the board and then disappear for years. Mr. Bell explained the enforcement aspect of the process. He said the relationship between the 2 is Mr. Figa lodged a complaint, and investigated and it was determined Mr. Gumper could get a permit for his accessory use and if the board approved that request, then Mr. Figa's complaint goes away. Mr. Figa said he also complained about the wires and nobody went out there. He said he made it to the Fire Marshall and was told he needed to go to the Building Inspector. Mr. Bell said the board just passed a motion requesting the Building Inspector look into that along with other issues. Mr. Figa asked why did it have to get to that point and Mr. Bell responded he would have to ask the folks downstairs.

Mr. Bell said he was not trying to be a beaucocrat and say it's not his job, but there are limits to what the board has authorization over and knowledge about and the enforcement aspect is not something he is familiar with. Ms. Valk addressed Mr. Figa and said he was comparing apples to oranges because there is some view as to whether or not this was a livable unit before and it could legally be habitated so we are not making the same comparison. Ms. Valk said all of the Code Enforcement Officers were going to be at her office tomorrow morning and discuss with them what occurred this evening and make sure they are aware of the issues.

OTHER BUSINESS:

WRIGHT FARM SUBDIVISION – Proposed special use permit located on Old Grange Road containing 234.47 acres (Grid No. 6559-02-760965, 6660-03-025117, 6660-03-058120); consideration of preliminary and final subdivision approval.

Mr. John Andrews of Rohde, Soyka & Andrews spoke. He said last meeting there were concerns with 2 issues – #1 being the Ridgeline Overlay Protection Zone, there was some indication they needed a special permit, they had permission to set the public hearing if it was needed. They also received variances for the lots and there some issue with respect to the one lot regarding the variance. Following the last meeting, there was a meeting with the Code Enforcement Officer at which Ms. Valk attended as did the client and it was decided Mr. McLaughlin would prefer that a special use permit for lot # 8 or any of the lots impacted by the ridgeline protection overlay zone be deferred until such time as you have a specific development because there was a concern on his part if you didn't do the right job, you could end up rather unique and extraordinary on the ridgeline, which you don't want. Mr. Andrews' client agreed and he agreed to place a note on the plat that

says any development on any of the lots subject to the ridgeline overlay protection zone will obtain a special use permit from the board before proceeding. Mr. Bell asked if they were talking about subdividing. Mr. Andrews said any development whatsoever, if they go for a building permit for a house, because of the unique nature of where you see this.

Ms. Valk said Ken brought her into a meeting and as Mr. Andrews states the variance question was resolved and his interpretation of the code is that a variance is not needed. In addition to the note on the map, she will be drafting a restrictive covenant to go in the chain of title so your future purchasers of these lots are going to have in there as well.

Mr. Andrews said those were the basic impediments at the time to obtaining preliminary and final approval, which they are seeking. They have NYSDOT concept approval and they have a letter from Walter, most of the issues having been addressed with some minor issues that they would wrap up. Mr. Bolner's comments for some reason were lost in the shuffle and he said he did not receive them and finally got them today. He said one of his comments dealt with the lot that has been resolved. Several comments deal with driveways. Mr. Andrews said they are proposing common drives up to a point on all the lots and have provided profiles for the basic common part up to the first split because his clients are going to build on lots 1 and 6. Mr. Andrews said some of these driveways get rather steep so Mr. Bolner is looking for a commitment to provide driveway profiles and obtain grading permits and Mr. Andrews said they would commit to putting a note on the plat that when any of these lots come in to be developed, they realize they have to provide a driveway profile and grading permit and it may modify the stormwater management plans also.

Ms. Livigni said even though there wasn't a comment letter these were all discussed at the last meeting. Mr. Bell asked if they were ready for preliminary and final. Mr. Artus replied there are relatively minor comments that could be conditions of approval, however what they don't have is conceptual approval from DPW. Mr. Andrews said they have a colorful story with DPW. He said DPW has right now today a curb cut that they themselves constructed, it's an agricultural driveway and they are not proposing any changes, it's just an agricultural access. Mr. Andrews said they show a driveway and a house because they need to in order to comply with the code, but they have no plans to develop the lot. Mr. Bell said he didn't care. He said it's a house on the plan that he's going to sign and it's a driveway attached to a county road on the plat he's going to sign and he wants someone from the county to say that's ok. Mr. Andrews replied not a problem. He said they tried to get that and they would be willing to take that as a condition.

Mr. Bell said it sounds like at a minimum they could do preliminary right now. Mr. Straub made a motion to grant preliminary sub division approval, seconded by Mr. Gunn and the motion carried unanimously. **PRELIMINARY SUBDIVISION APPROVAL**

Mr. Bell asked what issues besides that are holding up final. Mr. Artus said that is really the only thing he would say is. There are other minor comments that could be conditions, including the common driveway maintenance agreement. Mr. Bell asked where were

they with the county. Mr. Andrews said they've talked to them and they were supposed to get a verbal approval to Wanda by this afternoon 4:00 and they did not. Mr. Bell asked they were supposed to saying they would? Mr. Andrews replied yes. Mr. Bell asked if they said they would give a verbal approval or if they would take a position one way or the other. Mr. Andrews said he was left with the impression they were going to give a verbal approval. Mr. Bell said so we have no reason to believe that they are not going to give an approval. Mr. Andrews replied that's correct. Mr. Bell asked how the board felt about DPW approval of that one curb cut for a driveway being a condition for final. Ms. Livigni said she didn't think they were going to approve that as a driveway. Mr. Andrews said they were going to approve it with the understanding that if somebody comes in for a building permit they have to make certain improvements. He said there's a note in his letter they agreed to and Mr. Andrews clarified that they said they were going to agree to it. Ms. Livigni said she would not accuse Mr. Andrews of not being accurate.

Mr. Bell said so what you are saying is they may approve it with some conditions. Mr. Andrews said yes and the conditions they are going to have to make some line of sight improvements. Mr. Bell said if some point you actually go to build it and Mr. Andrews replied that is correct. Mr. Bell said that would be a part of the approval they send and we could condition final approval on getting a written letter to them.

Ms. Livigni read a letter from DPW which stated the existing agricultural entrance on CR-21 has an insufficient stop line sight distance. This location is not acceptable for a future residential driveway unless improvements are made to achieve this. Mr. Bell asked what improvements and asked if it would as simple as trimming brush or moving it to a completely different location. Mr. Donohue said what they don't say you'll never get a permit. Ms. Livigni said she's just making the board aware of the last correspondence she received and Mr. Andrews did respond to this letter and Steve Gill did leave a message for her today and she couldn't get a hold of him.

Mr. Andrews said with all due respect to everybody, they are not proposing any development on these lots, that's been the thing from day one. He said they are showing this because they need to conform with the zoning code. Mr. Andrews said they could really get into a shouting match with the county because they were granted an easement to make the Noxon road improvements. The condition of that easement is that they would leave them with adequate lines of site. Mr. Andrews said they didn't leave them with adequate lines of site, by their own letter and added they weren't taking that up with the DPW at this time. He said they just want conceptual approval and want to know what the conditions are just like the board does.

Mr. Bell said it sounded to him that they would grant conceptual approval but at such time that you actually go forward to build a driveway there, somebody is going to have to figure out how to remedy that. Mr. Andrews agreed and said that is the note he agreed to put on the plat. Mr. Bell said he thought he was ok with that. Mr. Brenner asked how they knew for sure what the DPW would say. Mr. Andrews said he still has to satisfy that before the chairman signs it. Ms. Valk said if it comes back different for any reason,

then they don't get their plat signed. Mr. Andrews said he can't get that signed until he gets the letter. Mr. Bolner said he agreed with everything that was said from the standpoint of the interpretation of his comments, but he wanted to clarify that his comments actually say that under the code, a driveway profile would be required for the individual lots but understanding that the houses may not be in the location they are showing at this point in time and added he felt it would be reasonable to have that as a condition of the actual building permit for that lot rather than them produce a profile that they ultimately end up building a house in a different configuration and they have to redo it anyway.

Mr. Brenner said everybody else on steep grades has to show a driveway profile, so why does one applicant not have to. Mr. Bolner replied based on the size of the lot. He said that's why he wanted to clarify that with the Planning Board because if the board disagrees with that. Mr. Bell asked how many lots were they talking about not doing that for and Mr. Andrews replied 5, the existing house is one, you have profiles for both of these lots up until the first split and added it's the balance of the lots, lot 8, 2, 3, 5 & 7 and Mr. Bolner said that was the reason he wanted to bring it up because that would be at the disgression of the Planning Board. Mr. Andrews said they don't know where the houses could be, they could be throw a way driveways and he said most of the driveways are over the old farm roads anyway so as to minimize disturbance.

Mr. Bell said we don't know where the driveways are going to be, don't know what the profiles are going to be and they don't know where the houses are going to be, and asked what was he approving. Mr. Gunn said a driveway to nowhere. Mr. Andrews said you are approving a large size lot subdivision is what it is and these are not your standard 1 acre building lots. He said he's got as many house sites on some of these lots as he has acres. He said it's 125 acres and said he has multiple house sites. Mr. Andrews said he understood what the board was saying.

Mr. Bell asked how does this relate to how the board normally does this. He said the board normally approves a plan that shows where the houses are going to be. Mr. Donohue said he's not saying they will be built. Mr. Bell said in general if he signs a subdivision plan and somebody wants to build a house in a different place than the plan shows. Mr. Bolner said they would have to come in for a revised grading plan.

Mr. Bell said not on this one, some other plan where the houses and driveways are all in place and somebody decides to move a house over to a different spot, and asked is that anymore involved than getting a building permit. Mr. Bolner replied actually he didn't believe so in this town. Mr. Artus also commented not in the town of LaGrange.

Mr. Bell said then this is not highly unusual except how it relates to the incline of the driveway. Mr. Artus said relative to the grading of the driveway on a subdivision, maximum driveway grading is 10%. The Planning Board can grant him up to 15% between that 10 & 15% we require them to prepare a profile, maybe his driveways will be at 9% and Mr. Artus added we don't know if they will even need profiles. Mr. Andrews said he was not trying to bypass the law and understood what the board was

saying but added he didn't know of too many subdivisions that create 125 acre lots. He said there was one earlier on the agenda where 3 acres was cut off of 141 farm. He said they are essentially doing the same thing on a larger scale. Mr. Andrews said they are not proposing any development, they had to show the lots were reasonable and that they could do it and they did that. Mr. Andres said if the board wants notes on there that say before you get a building permit, you have to come in for a grading plan, provide the town with a driveway profile that meets the town standards, he said they would be more than happy to put those notes on the plat. Mr. Andrews said the county had asked them to put a note on the plat that says the house and driveway location were conceptual, for approval purposes. He said in order to build what you have to build, you have to get the necessary permit and added they would be willing to put those kind of notes on. Mr. Bell said along with the county one for the driveway and Mr. Andrews said yes. He said they will put it on the rest of the lots too. Mr. Bell said he was ok with that and asked Mr. Brenner if he agreed. Mr. Brenner said that's fine, they are passing on to whoever buys the lot. Mr. Andrews said their basic guideline was to offer large acre tracks for farms. He said if someone wants to build a house on there, that's ok, but he doesn't know of too many people who are going to buy a 125 acre parcel just to put a house on it and not do more, so they are trying to offer that flexibility.

Mr. Andrews said he will put whatever notes the staff is comfortable with and whatever the staff is comfortable with. Mr. Bell asked the board if they were ok with that. There was no objection.

Mr. Artus said he would have to speak with Ms. Valk and put together all the conditions. Mr. Bell asked for a motion to grant conditional final approval based on a resolution containing conditions that were discussed during the evening. The motion was made by Mr. Donohue, seconded by Mr. Brenner and passed unanimously. **CONDITIONAL FINAL SUBDIVISION APPROVAL.**

Mr. Tippy Stensrud asked about Recreation fees. He requested that the fees be waived based on the type of subdivision this is and as being identified in the open space document and they have kept it as agricultural. Ms. Valk said the waiving of recreation fees is a discussion between the applicant and the Town Board. The Planning Board has no authority in that regard. Mr. Stensrud asked if the board would make a recommendation to the Town Board regarding that. Ms. Valk said when it comes to money, she didn't know if that would matter.

Ms. Valk said there is nothing in the code that says the Planning Board has the authority to recommend and advised the Planning Board to not recommend. She repeated that the applicant needs to go to the Town Board. Mr. Bell agreed and said the answer was no.

PINE HILL ESTATES II SUBDIVISION & SPECIAL USE PERMIT – Proposed subdivision and Special Use Permit located on Cramer Rd. /Old Overlook Road; set public hearing.

Mr. John Andrews appeared before the board. He reminded the board these were the 2 lots that were isolated by the power lines, on their own piece and they would like to subdivide them ahead of time. This went to a public hearing once before and asked the board set another public hearing at the next regularly scheduled meeting. Mr. Bell said this was all one project. Mr. Andrews said all one project but separate parcels. Mr. Bell said so now they are separating it into 2 separate applications. Mr. Andrews replied correct.

Mr. Straub made a motion to set a public hearing for June 15, 2010, seconded by Mr. Brenner and the motion carried unanimously. PUBLIC HEARING SET.

Mr. Andrews said this is in Ridgeline but is gracefully disguised by the power lines.

TACONIC CROSSINGS AMENDED SITE PLAN – Proposed site plan located on Rte. 55 containing 10.5 acres (Grid No. 084940; 128948); update/discussion

Ms. Kelly Libolt of Page Park Associates spoke. She said everyone knows the site and they are seeking permission for a 4,000 sq. ft. addition in the rear and amended parking over to the west of the site. Since last before you they have amended the application to remove any of the work in the back of the facility and making modifications to the parking in the rear and are focusing all of their attention on the west side of the building.

Mr. Bell said the application they had the public hearing for is now going to be different. Ms. Libolt replied no, they just eliminated the work they were showing in the parking lot in the back. There's no change. Mr. Bell asked if that reduced the amount of parking. Ms. Livigni said they have changed the striping, there has been a change back there. Ms. Libolt said they originally talked about putting hammer heads and re-orientating the parking 90 degrees. Mr. Bell asked if the # of parking spaces was changing. Ms. Libolt said no. Ms. Livigni said the dimensions do. Mr. Bell said he is asking if the number is changing with what is sitting in front of him right now versus what they reviewed at the public hearing or are they just talking about them being oriented differently. Ms. Libolt said the same. Mr. Bell asked same number – different orientation. Mr. Bell said the addition was on the other one or not. Ms. Libolt said correct. Mr. Bell said if all they did was fiddle with the parking a little bit and everything else is the same as the public hearing, what were they before the board for. Ms. Libolt said final site plan approval. Mr. Artus said there are a number of issues to be addressed prior to final approval. Mr. Bell asked if any of the issues needed to be resolved before SEQR.

Mr. Bell asked for a motion to grant a Neg Dec. Mr. Rosenfeld made a motion to deem the project an unlisted action and to grant a negative declaration pursuant to SEQR because the Board finds that the project will not have a significant adverse impact on the environment because the impacts have been identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Straub seconded it and it was carried unanimously. NEGATIVE DECLARATION.

Mr. Bell said the board cannot give site plan approval because Mr. Artus just said there are a number of issues that need to be resolved. Mr. Artus said there are some issues the applicant may wish to discuss with the board.

Mr. Bell asked Ms. Libolt if she had the consultant comment letters. Ms. Libolt replied yes. Mr. Bell asked Ms. Libolt if she had any concerns with the comment letters. Ms. Libolt said one concern. She said let's just go to the issues which is the SWPPP needs to be finalized and they understand what they have to do with the exception of 1 and they are working on getting those in in the next few days. She talked about the seepage pits and said they need Health Department approval for the addition so there are 2 new seepage pits that are going in. She said they are at the finish line with the Health Department but added she doesn't have a permit because they are not there yet and they need the Neg Dec. Ms. Libolt said they have perks done, deep tests done and the design done. Mr. Bell said it sounded like they were close to having the SWPPP

Mr. Artus said it is sort of a convoluted sequence of activities that need to take place. His understand is they would like to commence construction ASAP. They can't commence any construction without SPEDES permit coverage and to get the coverage they need to finalize Greg's comments and his comments. At that point they need to fill out the MS4 SWPPP acceptance form, give it to Wanda to endorse and it needs to accompany the NOI to the DEC. Mr. Bell said all of this before site plan approval? Mr. Artus said there is no conditional site plan approval.

Mr. Artus said there is a stormwater facilities performance bond that has to be accepted By the Town Board. He said he asked Ms. Libolt to provide those numbers to him so he can review them and prepare a memo to go to the town board to get in front of them to establish that bond. Mr. Artus said all those were required before they can commence construction. Mr. Bell said he is still working through giving them site plan approval. How much of that stuff has to be done in order to get site plan approval and is it reasonable to think they will have all of that by next month. Mr. Artus said it is reasonable to think that.

Mr. Bell said it doesn't look like they will get approval tonight and it looks good for next month so he asked the applicant what did they want to do in the meantime. Ms. Libolt said they would like to seek permission to proceed at their own risk with the paving of the parking lot. He said they have been before the board since November and they have item 4 down and would like to seek permission to proceed only until after they have SPEDES coverage, so they are actively working on getting the SWPPP amended and hoping to get it to Greg's office within the next week and once Greg approves it, it would go to Wanda. All of this they are hoping to have done before the June 15th meeting which is why they were seeking permission to proceed with construction and work out all the administrative details with the SWPPP with the consultants so that if they get this done before June 15th, they can proceed.

Mr. Bell asked what needs to get done in order for them to commence construction. Mr. Artus said they need to get their SPEDES permit coverage and also important is the bond

be established with the Town Board. Mr. Bell said if they can get the SPEDES done and they can get the bond taken care of with the Town Board, can they commence paving between now and June. Mr. Artus said if the board so desires. Mr. Bell asked the board if anybody had any reason to think that anything beyond what we just talked about is not going to happen. The only other thing is the Board of Health. Ms. Livigni said it is contingent upon the applicant's professionals to come in with the documentation to sufficiently review it and contingent on the Town Board's agenda. Mr. Bell said he understood all of that and said if all that is done, what was left? Board of Health?

Mr. Bolner said they are coming into the Planning Board with a modified site plan application, therefore they have to comply with the town code regarding the parking configuration in the rear of the property. The argument has been made that there is a section of the code that says you do not have to comply with the parking and loading requirements of this section which is 242 and the point he is making is 239 also specifies the same parking size and aisle way. The parking size is 9 x 18 and the isle way is 24 feet, as shown on the plan they are proposing spaces that are 15 feet deep and an isle way of 20 feet. Ms. Libolt commented, which are all existing. Mr. Bolner said the existing alignment of the isle way exists, however they are actually adding 36 parking spaces in the rear. Ms. Libolt said the way these loading docks were configured, there were areas that were x'd off here so that the trucks could come in, back in and pull back out again. All they did was they took areas that were hatched and made spaces, they haven't realigned anything and haven't changed anything. Ms. Libolt said Greg and she are going to agree to disagree on this that if she took an area that was hatched and changed it into a parking space, she would have to come back to get site plan approval for that.

Mr. Bolner said he was not saying that. He said they are coming in for amended site plan approval and under the amended site plan approval it is his understanding, unless the attorney would like to correct him, they are required to comply with town code requirements for parking. Mr. Bell said we are in a situation where if they left it striped so you can't park there, it would fine. Mr. Bolner said no, he would actually go further to say that once they come in for the amended site plan approval, they have to conform with the parking requirements for the entire parking area including the eastern portion and everything. He said the only portion of the code that appears to be a waiver is if you have 340 parking spaces and the current code says you have to have 400 spaces, that if it's an existing structure that the town does not require you to increase the number of parking. Mr. Bolner said it is not his interpretation of the code that says you don't have to comply with any of the parking layout requirements. He said that's the difference of opinion.

Mr. Donohue said if they complied with the code, then have to completely redo the entire site and asked if that was what Mr. Bolner was saying. Mr. Bell said the rest of the site does comply. Ms. Libolt said there are some spaces that don't comply. Mr. Bell said all the new parking complies and Ms. Libolt responded correct. Mr. Bolner said his comment letter actually says that he believes the parking requirements in the rear of the property do not conform to the current town code and because they are increasing the number of parking spaces in the rear, his opinion that the town Planning Board should consider that to be a change and therefore it has to comply. The parking to the east of the

building, because they are not proposing any changes in that area, while it does not conform, that is something that the board wants to waive that, it would be reasonable for them to waive it. Mr. Bolner said he is the consultant to point out to what those requirements are in the code. If the board wants to waive all site plan approval requirements, that's the board's digression. He said he was just pointing out what the code says. Mr. Donohue said he was following along those guidelines by saying that if the code is asking for complete change, the board has to look at it and ask if that is good planning and added sometimes it is. Mr. Artus brought up the example of Apple Valley.

Mr. Bell said so he understands, the parking in the back is staying exactly the same as it was, with the exception that some areas that were previously unavailable for parking because of the loading docks are now going to be striped. Ms. Libolt said yes. Mr. Bell said they will be striped consistent with the rest of the parking spaces. Ms. Libolt said correct. Mr. Bell said and these over here stay the same because they are not moving but everything that is new complies. Ms. Libolt said yes.

Mr. Bell said if the board asked the applicant to re-stripe the ones in the back to comply, how many spaces would you lose. Ms. Libolt replied 44 and Mr. Bell asked the requirement for the site.

Ms. Libolt said they are under what is required and Mr. Bell said so complying with the code would make it worse. Mr. Bell said this is exactly what we did in Apple Valley and in Apple Valley the board said complying with the code made it work worse so why would we do that. Mr. Artus said the difference with Apple Valley were obvious and Mr. Bell said it was also if we made them comply there would be less parking and the entire site would work worse. Mr. Bell said the board can make them comply but the result is the site's going to be worse. Mr. Bolner said he wouldn't necessarily say that. Mr. Bell said if we make the parking spaces comply with the dimensions, then they become further removed from complying with the number of spaces. So they are deciding on whether they would like to be too few spots and have them all the right size or more spots and have some of them smaller than the right size. Mr. Bell said there's no choice to have them the right size and the right number. Mr. Bell the board is really deciding on which way they are going to be out of compliance and his inclination was to say if all the new stuff complies and all the old stuff doesn't with the exception of a couple of loading areas there, that makes more sense to him. The Board agreed. Mr. Bolner said maybe they should go back to the public hearing because the public hearing they came in with was a complete reconfiguration of the rear parking showing additional grading and improvements and now they are saying they are not going to comply with the current code. Mr. Bell said the only reason for re-opening the public hearing would be if the planning board determined that the change was substantial from an environmental standpoint and it didn't sound like the board was inclined to do that.

Mr. Bolner said if the board would like to waive it, they can waive it. Mr. Donohue made a motion to waive it, seconded by Mr. Straub and the motion carried unanimously.

Mr. Bell thanked Mr. Bolner for pointing it out.

Mr. Bell asked the board's feeling on allowing them to pave as long as all the other stuff gets taken care of because all they need is Board of Health approval. Ms. Libolt said they have talked to them and added they had no reason to believe they would not approve it. Mr. Bell said he felt he was ok with it.

Mr. Artus said they also need conceptual approval from the NYSDOT. Ms. Livigni said there was a letter received from DOT saying there may be further analyzed and there may be restrictions on movements in and out.

Ms. Libolt said she received their work permit from DOT for this entrance and they are going to keep analyzing Rte. 55. She said one is getting closed. She said one of the conditions on t here is that they are going to continue to analyze lefts out of this site and determine if any further action has to occur, but that DOT has chosen to put that in there. She said what they are going to do, she didn't know. Mr. Bell asked for how long and Ms. Libolt said there's no time frame on it. Mr. Artus said he didn't get a copy of the email. Mr. Artus said at some point in time DOT may restrict the applicant from making a left turn out of that site. Ms. Livigni asked the applicant if they were going to schedule the inspection of the drywells and septic because she has not had that inspection scheduled. Ms. Libolt said they need to do it. Ms. Libolt said they had a seepage pit that collapsed, the 2nd one. Mr. Bell said he would like everything buttoned up before final.

Mr. Bolner said going with this conversation, he did have a 6 page comment letter. There are several other items that need to be readdressed. Mr. Bolner referred to the town code does require that parking spaces in excess of 25 or more are required to be curbed and landscaped. At the last meeting it was his understanding that the board agreed to waive the requirements for landscaping in the rear portion of the property and Mr. Gunn requested additional landscaping in the triangular portion of the eastern which has not been modified and it was not his understanding that the town board waived the curbing in its entirety. Ms. Libolt said they agree to do the curbing. Mr. Bolner said he wasn't sure where they were on anything. Ms. Libolt said they would fix the landscaping. Ms. Livigni said maybe the best thing would be is to make a submission with everything they are agreeing to do so Greg can write a letter that says comment satisfied. Ms. Libolt said they went through all those items yesterday and Mr. Bolner said what he thought they went through was for the SWPPP portion and what needed to be done for that.

Mr. Bolner said with the change in the alignment in the parking as compared to the previous that the facility emergency vehicle needs to go back in front of the fire inspector because the plan that was previously reviewed by him showed a different layout for the vehicle movements in the rear of the property in relation to the spacing between the aisle ways and the building so he didn't know if that is an issue, but it would need to go back to the fire inspector. Ms. Livigni said what they are showing is existing which has been existing for many years. Mr. Bolner said Ken never approved anything. Ms. Libolt asked about an expiration of the time frame because month after month they have talked about this and they don't get anything with the aisle widths in the back and have been there for 20-30 years. The issue of whether the fire inspector is in receipt of the plan was

brought up. Ms. Livigni said she stood in his office and have mentioned it 3 or 4 times. Mr. Donohue said if staff doesn't respond they have to take that as an approval. Mr. Bolner asked if the fire inspector has seen the new plan. Ms. Libolt said the deadline for this meeting was actually last week, and they would like to be on the June 15th meeting so if they need to get some plan changes done, and she asked if that comment letter could be obtained from the fire inspector so she could get an amended package into the board. Mr. Bell asked about the trees and fence. Mr. Bolner said it's minor, it indicates on the plan that it is existing and they are currently existing but they were not when the application began so it needs to be accurately reflected and they agree. Mr. Bolner said the rest of the comments are generally clarifications. With relation to the traffic, if they are looking for final site plan, it clearly brought to light that the number of parking spaces they are currently proposing are going to exit through one single 14-foot curbed exit that is shared with the adjacent property so he raised the concern if anybody is taking a left turn it's going to back up the entire parking lot from exiting until that person takes a left hand turn because there is no way to get around that individual.

Mr. Bell said they could be fixed by not letting them make left-hand turns. Mr. Bolner said that is something that should be addressed in the site plan approval. Ms. Libolt said the DOT issued them a permit to close the curb cut. Mr. Bell said the DOT doesn't care how much the traffic backs up in their parking lot. Mr. Bolner said it is an internal issue and bringing it to the board's attention because sometimes the board does get criticized afterwards because they allowed them to build it that way.

Ms. Libolt asked for closure on the subject and added they've been here since November and this is the first she is hearing about it. Mr. Bell said his reaction is this is awfully late in the game to be raising that.

Ms. Libolt said unofficially they were probably going to talk to the DOT about taking the easterly entrance and making it a full turning movement.

Mr. Bolner said every comment hasn't been addressed and asked if was going to be the end of the world between now and the addressing of the comments, probably not, but there's comments about signage for the internal traffic movements, he said they agreed to provide that and he hasn't seen it yet. Mr. Bolner said would it change the Planning Board's opinion, he didn't know, but added he was feeling a little bit on the spot in the sense of which comments is going to be a concern to the Planning Board and added it is going to be hard for him to make that determination. Mr. Donohue said the question we are answering is do we think they can pave, he said they can pave at their own risk. Mr. Bell said his concern to allow them to pave would be if he was concerned at some point it wouldn't get approved so he asked were any of the issues something that he didn't think would get resolved. Mr. Artus said they have to have the SPEDES permit before they can pave. Mr. Bell said some of the stuff has to get done before they can do anything, but the rest of the stuff needs to be resolved before they get site plan approval and added he hasn't heard anything that makes him say he doesn't think that's going to happen.

Mr. Bell said the risk is typically that they will do stuff and then it won't get approved and something bad is going to happen. Mr. Bell said they are not asking to build a road with houses that are never going to get built on. Mr. Bolner said he agreed with that statement. Mr. Bolner said he thought the board was saying are any of the comments important before they get site plan approval. Mr. Bell said no. Ms. Libolt said she acknowledged that she would address Walter and Greg's comments heard tonight in the submission next week. Mr. Bell said he would really like it to be resolved by June and would really not like to say proceed at your own risk to pave the parking lot and find out in August we still haven't closed on this thing. Ms. Libolt said their goal is to submit Monday. Mr. Bell said his concern is that the board gives them what they need and they don't see them again. Ms. Libolt said she is not going anywhere.

Mr. Artus said he would like to see the SWPPP approved sooner than later. Mr. Bell said the SWPPP needs to be approved before they can do anything. Mr. Artus said they have been operating all along without SPEDES permit coverage which is problematic for the town. Mr. Artus said in the town's best interest he would like to see the SWPPP approved and they get coverage as soon as possible. Mr. Casamento said they will have something by the end of the week or beginning of next week. Mr. Casamento said he had about 75% of it done.

THE POOL GUYS SITE PLAN – Proposed site plan located on Rte. 55 containing 1.535 acres (Grid No. 6560-02-501968)

Mr. Gary Beck of Z-3 consultants appeared before the board. Mr. Beck said this is located on Rte. 55 across from Page Self Storage. Mr. Beck said this is an empty lot. The people who own this are called the Pool Guys, If you go out on Rte. 44 in Pleasant Valley, you will see a building next to Arnoff Storage that says the Pool Guys, and they are the same people. He said it is pool storage and displays being proposed. Mr. Beck pointed out the pole barn and parking, 5,000 sq. feet. Mr. Bell asked a pole barn? Mr. Beck said it is not going to look like a pole barn, it's that type of construction. Mr. Bell asked what they were selling. Mr. Beck said pool supplies and pools. Mr. Beck said this is in a C-2 district. Mr. Beck asked the board to set an escrow. The board set \$1,000 escrow.

Mr. Bell asked if this was ready for public hearing. Mr. Donohue asked if this complied with the bulk table and Mr. Beck said yes. Ms. Livigni said there are zoning comments. Mr. Bell asked if the map met the requirements. Mr. Beck said there was a typo indicating R-120, it's actually in C-2. The board requested a long EAF.

Mr. Artus said he hasn't seen the project. Mr. Straub made a motion to set the public hearing for June 15, 2010, seconded by Mr. Gunn and the motion carried unanimously.

REQUEST FOR TIME EXTENSIONS:

WHISPERING PINES – 90-DAY EXTENSION of re-approval from final approval (last one)

Mr. Straub made a motion to grant a 90-day extension, seconded by Mr. Gunn and the motion carried u unanimously. 90-DAY EXTENSION GRANTED

LAKE RIDGE SUBDIVISION – 90-day extension of re-approval from final approval (last one)

Mr. Straub made a motion to grant a 90-day extension, seconded by Mr. Gunn and the motion carried unanimously. 90-DAY EXTENSION GRANTED

VERIZON WIRELESS – set escrow

The Planning Board set the escrow at \$4,000.

Ms. Valk spoke about cell tower regulations. She said the FCC has issued a declaratory ruling that applications for new towers are to be processed within 150 days. Co-locations within 90-days. She said they cited T-Mobile V. Town of LaGrange as one of the reasons.

Ms. Valk said the board has 30 days to tell them if their application is incomplete and that doesn't count towards the 150 days and by request of the applicant you can get mutual consent to these. Ms. Valk said this essentially makes this ripe for early litigation. Mr. Straub asked when the clock starts. Ms. Valk said from when they submit a complete application.

Mr. Bell said what he thought he heard is the board thinks this is complete, so the clock started ticking on May 5th. Mr. Artus said based on his experience on working with wireless, he has never gotten a new tower in 5 months. Ms. Valk said they did a survey nationwide. Mr. Artus said there are public hearings and potential visuals the board may want to see and it is in Ridgeline and the board may want to see leaf on, leaf off.

Ms. Valk said she would try and seek the applicant's consent first and when t hey are ripe for review, the court will consider all the factors. It doesn't automatically mean, it's not an automatic approval and doesn't automatically mean the court is going to rule for them, but we all know the federal courts are very much in favor for these cell towers. She said anytime you can get the applicant to consent to an extension is the smart way to go.

Mr. Bell asked shouldn't we get this thing going. He said it is a Type I action. Mr. Bolner said the way this board works is you get a submittal in, send it to the consultant, ask for a proposal. He gave a proposal and there has been no escrow set and he has been given no authority to review this so how can a determination of completeness when there's been no authority to review what's been submitted. Ms. Livigni said that's why they were put on the agenda, to set the public hearing.

Ms. Livigni said if the Planning Board doesn't have to set the escrow.....Mr. Bell said yes the board does need to. Mr. Bolner said he hasn't even looked at it so he can't deem it complete. Mr. Bell said this is a type I action and asked if the board could vote to circulate for Lead Agency or did the board have to wait until someone says the

application is complete. Ms. Valk said the board can give the authority to the consultants if they feel it is complete. Mr. Bell said if the consultants determine this application is complete and all the copies are received, we can circulate for Lead Agency and the board doesn't have to wait until next month. Mr. Artus said the board is declaring it's intent tonight. Ms. Valk said when does the clock start, and the clock starts when the application was filed, and she said she knows they have procedures, but the federal court doesn't care and it's late and may have to accept the fact we have to change some of their procedures.

Mr. Bell said what can the board do to avoid being sued on this. Mr. Bolner said the town code specifically says the tower cannot be built over 35 feet in a residential zone and if the code is wrong and against the law, then the code needs to be changed, otherwise it is very difficult as a consultant to read the code and be the attorney at the same time.

Mr. Gary Beck Sr. spoke and said change it to what, you might as well do away with it because at any point in time, they are going to get what they want anyway.

Ms. Valk said the Town of Poughkeepsie's code seems to work fairly well, if the board wanted to take a look at that. Mr. Donohue asked if we needed a cell tower consultant on this. Mr. Livigni said Mr. Artus has extensive cell tower experience.

Mr. Bell asked for a motion to circulate for lead agency as soon as the town's consultants determine that the application is complete and there are enough copies to send out. The motion was made by Mr. Straub, seconded by Mr. Donohue and carried unanimously.

Mr. Donohue asked the board motion to send a letter to the town board that it's brought to the Planning Board's attention that the current of the Town of Lagrange is not in compliance with FCC. Ms. Valk said it's not that it is not in compliance, it makes it difficult. Mr. Donohue asked if this could come straight to the board instead of going to Zoning because they can make appeals from the Planning Board which means they can start the process and if they change the law, it stays with the board so it's not going to the ZBA. She said the Planning Board can deny them and send them to the ZBA, they don't have to do it downstairs.

Mr. Bell said typically they get sent to the ZBA before they come to the Planning board. Mr. Donohue said they should come to the Planning Board first. Mr. Bell said in the case of cell towers, his feeling is it makes no sense whatsoever to send the applicant to the ZBA for their stamped approval. It was clarified that the ZBA wasn't going to deny the applicant, that Ken McLaughlin denied it. Mr. Bell said he had a conversation with Mr. McLaughlin where Ken said it makes no sense to him at all to send this to the ZBA when the Planning Board hasn't even decided if the site they want to put it on makes any sense. Mr. Bell said he agreed, bring it to the Planning Board first so the board can see if it makes any sense and if it does, then the board will send them to the ZBA.

Mr. Bell asked if anybody has looked at the application. Some board members have and asked if the board had any reason to believe that the site is going to be such that the board

will say it's no good at all. Mr. Donohue said there is a map that was produced for the Town Board for the Town of LaGrange that shows locations for cell towers, it was done by John Andrews and asked if it was still around. He said it was adopted and approved and if that location shows on that map, it is an approved location.

Mr. Artus talked about RF engineers and propagation maps that show they need this coverage. Mr. Donohue said that map was based on that. Mr. Artus said it goes by carrier. Mr. Donohue said there is something on file and again Mr. Artus repeated it does go by file. Mr. Bell asked if anybody believed that they were going to show them maps that don't indicate they have a requirement and asked if anybody felt comfortable arguing with an RF Engineer about the accuracy of it, so why would the board do that.

Mr. Bell asked if this was the same location the last time the board considered a cell tower on Rossway Road. Mr. Gunn said no. Mr. Bell asked the board if they had any reason to believe that the board would say this is an inadequate location, so if the board things they are not going to say that, then they should go to the ZBA right away. Mr. Donohue said the Town Board should act and change what they need to change while the Planning Board is reviewing the application. Mr. Bell said he didn't know what they needed to change. Mr. Donohue said they need to change everything because it is not working. Mr. Bell said they are not going to vote and change the law in the next 30 days.

Mr. Donohue said they did the adult orientated law in 45 days so they can do it. Mr. Bell said he didn't say they couldn't do it, he said they are not going to do it.

The board continued to discuss the issue of the cell tower laws and Mr. Donohue made a motion to send the Town Board a memo that the cell tower ordinance is not working and is difficult to administer and every cell tower the board has reviewed has ended up in a federal lawsuit. Mr. Bell said he didn't think it was their fault. Mr. Straub seconded it and the motion carried unanimously. Mr. Bell said he would write that memo.

Mr. Donohue brought up a person earlier that wasn't paying attention to the Chairman and said he tried to re-enforce the chairman to let him know. Mr. Donohue said for all members on the board to warn the person he's been asked twice and if the person says no, the Chairman should adjourn the meeting and the board leaves the room. Mr. Donohue said the board takes 5 minutes and come back in and if the person doesn't sit down, they call the police. Mr. Beck said the chairman can also set a time limit for people to speak.

Ms. Valk said it's usually helpful if there is an enforcer in the room. Mr. Donohue said people have to respect the Chairman and the board. Ms. Valk said she agreed there needed to be a strategy in place.

The board voted to adjourn the meeting at 11:15 PM.

Respectfully submitted

Eileen Mang
Planning Board Secretary

