

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday, December 21, 2010. Chairman Alan Bell called the meeting to order at 7:30 P.M. Board members Robert Straub, Dennis Rosenfeld, Stacy Olyha, Tony Brenner were present. Joe Zeidan and John Gunn were present. Also present was Wanda Livigni, Administrator of Public works, Walter Artus of Storm water Management Consultants and Rebecca Valk of VanDeWater & VanDeWater.

Mr. Rosenfeld made a motion to accept the minutes of November 16, 2010, seconded by Mr. Straub and the motion carried unanimously. MINUTES ACCEPTED.

PUBLIC HEARINGS:

VERIZON WIRELESS COMMUNICATIONS FACILITY – Proposed site plan located on Rossway Road containing 41.6 acres (Grid No. 6562-03-370380)

Mr. Bell declared the public hearing open and asked for a motion to adjourn. Mr. Straub made a motion to adjourn the public hearing to January 18, 2011, seconded by Mr. Brenner and the motion carried unanimously. PUBLIC HEARING ADJOURNED.

EXISTING SPORT COURT WETLANDS PERMIT – Proposed Wetlands permit located on Apple Summit Lane containing .4 acres.

Mr. Dan Garay appeared before the board. Ms. Livigni said Mr. Garay installed an all sport court just within a DEC wetland buffer. She said he came in to the town and inquired what he needed to do and in error the town failed to require him to get a wetlands permit. At this point Mr. Garay has been willing to come in and rectify it. Ms. Livigni said she spoke to the DEC and said they indicated no action on their part was necessary. So for bookkeeping and a clean file they agreed to handle it this way.

Mr. Bell declared the public hearing open and asked if there was anyone who wished to speak. There was no response.

Mr. Straub 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 identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Rosenfeld seconded it and the motion carried unanimously. NEGATIVE DECLARATION

Mr. Straub voted to grant Existing Sport Court a Wetlands Permit, seconded by Ms. Olyha and the motion carried unanimously. WETLANDS PERMIT GRANTED.

POOL GUYS SITE PLAN AND SPECIAL USE PERMIT – Proposed site plan and Special Use Permit located on NYS Rte. 55 containing 1.535 acres (Grid No. 6560-02-501968)

Mr. Gary Beck Jr. appeared and asked for a waiver on the parking to start with.

Mr. Bell asked why the public hearing had been adjourned. Ms. Valk said the Building Inspector had a question about the creation of the lot and she said she researched it and this lot pre-exists zoning and was created long before the town had adopted zoning regulations at all so she said she advised Mr. McLaughlin of that and added that was the only issue she was aware of. Ms. Livigni said County Planning is still waiting on a complete submission. They do have the architectural drawings but they still need a lighting plan and landscaping plan and Walter had the same comments in his letter so we technically do not have a full submission. She said she recommended not closing the public hearing until we have all that and strongly recommended the applicant get that in so we can close this in January.

Mr. Beck said they would like to ask for the parking waivers. Mr. Bell said the board can discuss that after the board adjourns the hearing. Mr. Straub made a motion to open and adjourn the public hearing to January 18, 2011, seconded by Mr. Rosenfeld and the motion carried unanimously.

Mr. Beck referred to 10 spots they would like to eliminate because this is a wholesale pool supply and people do not come to look at displays, it would be more service than sales. Mr. Bell asked if the store sells pool supplies. Mr. Straub asked how many parking spaces were there now. Mr. Bell said it says 20 which is because it is classified as retail. Mr. Beck said there's more storage than sales area here for their service, within the building itself. Ms. Olyha asked about banking spots in case it changes from this type of business. Mr. Bell asked how many spaces did they want to bank. Mr. Beck replied 10. Mr. Bell said the building is 4,000 sq. ft. but it is not going to be 4,000 sq. ft. of retail, it's going to be much smaller so the spaces ought to be related to the actual percentage that is going to be used as retail as opposed to being total space. Mr. Beck said correct. Mr. Bell asked if there were any objections to the board changing the classification on the plan so that the spaces are shown there are potential to build but they can't plant grass there until some point the town decides there is not adequate parking and asks them to build it. Mr. Straub requested a note on the print that states this. Mr. Bell said that was a good idea.

Mr. Brenner asked a question concerning drainage that was not audible because he was not using his microphone. Mr. Beck's response was they are not changing it, but it would help eliminate some of it and would help them speed up the process as well as they won't need to provide the SWPPP and if the board approves it they can do the lighting and landscaping. He said they prefer not to have to do it twice. Mr. Beck said they were just slightly over an acre if they add those 10 spots and they would like to keep it under an acre. Mr. Bell said then if at some point the board determined that they needed to put in those spots, you would also have to modify the drainage. Mr. Beck said they would have to add to it.

Mr. Artus said you can't segment a SPEDES permit. If they really just want to get under the acre, he could understand the reasoning for that so they don't have to prepare a full SWPPP, but if they are showing areas banked those potentially could be disturbed areas at some point in the future which would put this application over an acre. Mr. Artus said this is sort of a gray area and it is somewhat of a segmentation of a SPEDES permit. He said if there is any other creative way they can get themselves under an acre. Mr. Beck said the store in P.V. is approx. 3,000 sq. ft., been there 7 years and there's only 6 spots and they don't fill up the 6 spots there. He said they don't anticipate this being any larger than it is. Ms. Livigni said if they are legitimately asked for a reduction in parking because of the size of the retail space, it isn't from what she was hearing, about segmentation. It isn't about them trying to avoid the SWPPP, legitimately they are saying it's because of the size of the retail store. Mr. Artus said if they come back and the board makes them put in the additional space, this would be over an acre and it would require a full SWPPP. Mr. Artus said they don't want to prepare a full SWPPP and he said he understood that. Mr. Beck said after reviewing the Pool Guys in Pleasant Valley, 7 years with 6 spots and there's been no change. He said that's the real reason why they asking for it here. He said they don't anticipate in a couple of years making this any larger. Mr. Beck said they are definitely not trying to segment it. Mr. Bell said the classification of this is retail but the nature of the store is it's not the kind of store where people come in and shop for a long period of time. Mr. Bell said Stacy mentioned something interesting – if it goes on here with this number of spaces and if for some reason in the future the building is sold to somebody else running retail, then it is what it is and that could be a problem because the next retail business might not have those characteristics. Mr. Artus said might just be a poor business decision on their part to open a retail store without adequate parking. Ms. Livigni said maybe they could limit the retail area to a certain size on the plan and if they came in for something bigger that would trigger an amended site plan. Mr. Beck said by designating on the map the size of the retail that it is smaller, they are talking about the 12 spaces without the banking because with the banking they run into the whole SPEDES thing. Mr. Bell asked the board if there were any objections. There were none.

Mr. Beck asked the board if they could proceed at their own risk to get started. Mr. Bell said the board hasn't even closed the public hearing and added he didn't think the board could do anything like that at this point. He said it was way too early. Mr. Beck said that's fine.

Mr. Beck asked if the board would vote on the parking waiver. Ms. Olyha said it's not a waiver because they are changing the size of the building which is going to change the footprint of the retail area. Mr. Bell said they need to indicate how much is retail and the amount that is wholesale and that will change the calculation. Mr. Beck asked if that's the case, would they end up with less spots. Mr. Bell replied potentially. Mr. Beck said they actually wanted less spots so that was good for them. Mr. Bell said to make sure the retail number they use isn't too small.

MOUSTAKAS SUBDIVISION AND SPECIAL USE PERMIT – Proposed 2-lot subdivision located on South Cross Road containing 7.37 acres (Grid No. 6560-04-820362); declare lead agency.

Mr. Straub made a motion to declare the Planning Board Lead Agency for Moustakas Subdivision, seconded by Ms. Olyha and the motion carried unanimously.

Bob Gray of Morris Associates appeared before the board. Mr. Gray said this is approximately a 7.3 acre property on the northwest side of South Cross Road. He said it currently has a house on it and are proposing to leave 3 ½ acres with that house and approximately 4 acres with a proposed 3 or 4 bedroom home. The existing house has an existing well and septic system and the proposed house has a proposed well and septic to serve the house. Previously this application was before the town and there were some issues with drainage of a culvert pipe that had been placed under the road and left. A whole was dug and the water was out of control. He said this proposal shows an easement being granted to the town approximately 600 feet long, a grass swale that will route the water to the back of the property to a level spreader. The town, Wanda and Walter spoke to the Highway Superintendent and they were all involved in the solution to this situation and that is why the project was moving forward.

Mr. Bell declared the public hearing open and asked if anybody wished to speak.

Randy Aldredge 13 South Cross Road said his primary concern is the drainage and stormwater management. He said prior to George Moustakas owning it, this was home to one of the largest apple warehouses in Dutchess County that the Cross's owned. After it burned down the property was re-graded and the water was re-directed closer to this property. Once George Moustakas bought it and built this house and the backyard was filled in, the water was again re-directed a little closer to this property. He said he talked to George and he promises him that this swale is going to keep the water off his property. From his 2003 letter in the packet he showed the board, it requested the town to come out. They did, they cleaned the entire drainage system, put a curb alongside the road, uncovered the end of the culvert to get them to where they are today. Things have improved and they are headed in the right direction. Mr. Aldredge said if the ground is frozen and it rains very hard, he said there is a video in his packet from his 2005 letter that will show the water runs across his backyard 6 feet wide. He said he cannot speak for any of his adjoining neighbors, just himself. He asked if he could meet someone out there to show them personally and he said he has George's assurance that this water will not run across his backyard. He said he and George have developed a great relationship and he believes what he tells him and if this is what happens, if the water stays off his property, it's up to the board as to whether he builds this house back there. Mr. Bell asked Mr. Aldredge if he was asking the water situation get no worse or are you asking that it be improved. Mr. Aldredge said it will improve. Prior to the warehouse burning down the water never ran across his backyard. Mr. Aldredge gave Mr. Bell a video and still pictures. Mr. Aldredge asked if he could meet someone out there to show them.

Rosalie D'Souza said she lived adjacent to the property. She talked about the drainage and showed the board her septic lines. She said this land is all clay and it's like rock and this stuff isn't going to perk, it's going to run over. Everything is at a slight slope and it's going to run over on to her land and septic. This is very significant to her and believes nobody has a right to direct their water onto someone else's property.

Mr. Bell said the board doesn't believe that anybody has a right to direct their water onto other people's property either.

Tricia Hanna of 22 Upton Rd. said her property backs up to the Moustakas property. She said she and her husband are opposed to this. She said they bought their house in 2006, did their research and they had heard there was a proposal looking into this before they even bought it. She said they knew there were drainage issues and added it looked like this was not going to go ahead. Ms. Hanna said Mr. Moustakas told them he would probably just put more animals. Ms. Hanna said they then got this letter to come to the meeting and couldn't believe it is opened up again. She said they already have drainage issues and they were fearful it would further damage their situation. Ms. Hanna asked if someone from the town comes out she would love it if they would take a look at her driveway and the gullies and they don't want it to worsen. Even just roughing up any dirt changing the flow of anything would make it worse. Ms. Hanna talked about keeping things green. She said her husband asked if they could purchase the property and do something to keep it green and private.

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

Mr. Bell asked where the driveway was. Mr. Gray showed him the driveway, the swale and the pipe under the driveway. Mr. Gray said this was looked at by Mike Kelly, Wanda and Walter, there was a meeting at the site and this interceptor swale was decided would work. He said the board needs to hear that from Mike Kelly. Mr. Gray said the interceptor is routing water that was put there by a culvert under the road. He said there's water being dumped on Mr. Moustakas' property from the road. He said they are working with the town highway department to get that done and added the board should hear that from the town's professionals and the Highway Superintendent.

Mr. Gray explained to Mr. Aldredge this was an interceptor that would go around his property. Mr. Artus said he met with a representative from Mr. Gray's office a couple months ago and they were very firm with the representative from Bob's office that this needed to be addressed in a satisfactory manner and this is what they agreed to and they find it acceptable and said he is not opposed to going out and doing another site inspection.

Mr. Bell asked where the water ends up. Mr. Artus said there is a level spreader so it would be a sheet runoff. Mr. Artus said there is no point source discharge proposed toward any property. Ms. Livigni said she would be happy to go out there next week.

Mr. Gray said this house is proposed approximately 100 feet from the Hanna property. Mr. Bell asked if the board would see a lot more detail on the storm water in the future. Mr. Artus said there's really not that much more to provide. Mr. Bell asked if there is anything else the board could do and Mr. Artus said the board could make a SEQR determination, they have satisfied all the requirements of SEQR and they need that to move forward with the health department. Mr. Gray said he received a letter from the Board of Health, with back and forth submissions to them and they are ready to go ahead with an approval on the septic system upon receipt of a SEQR determination from the board. Mr. Gray said he might add that the perks are not clay, they run anywhere from 12 minutes up to 32 minutes. It was agreed upon that the town would do a site visit and include Aldridge, Hanna and D'Souza present.

Mr. Straub 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 identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Rosenfeld seconded it and the motion carried unanimously. **NEGATIVE DECLARATION**

OTHER BUSINESS:

COUNTRY SQUIRE ESTATES – located on Rossway Road. Discussion and update on project.

Mike Gillespie of M. Gillespie & Associates appeared. He said this project is located on Rossway Road in the R-120 zone containing approximately 150 acres. This project has been ongoing with the town for a number of years and hasn't moved very quickly. There have been a lot of environmental constraints and issues. He said the plan before the board is for a 38 lot subdivision +/- This is still an active application with the town. There was recently a tree harvesting permit submitted to the town in order to start knocking down some trees and because this is an active application, that creates a little bit of an issue. Through the planning board process the board would take a look at certain trees, trees being kept and taken down. Mr. Gillespie said Art Maggiolo, one of the principals of the project, is not overly concerned about the fact if the board is concerned with preserving the trees and indicated they were not ready to let them go, it was not the end of the world. More of a concern is that with the time limits of the project and where it has been and hopefully where it is going, there's been a lot of modifications to the town code. One of the large changes has been to the buildable square. He said there was a certain amount of environmental constraints that were allowed within that buildable square maybe 25% and that has changed where the interpretation has been zero.

Mr. Gillespie said this map is devoid of lot lines, it only details slopes over 25%. He said they don't have one area of the property that is completely full of slopes and they don't have another area of the property that is completely flat. We have a piece of property that is literally undulating all the way down through. When you look at the buildable square

as related to the R-120 district, it creates a real restraint on the buildable lot count for the property. Mr. Gillespie said they had a meeting with Wanda and Ken McLaughlin to discuss the impact of slopes and the project. He said there are a lot of different options here in terms of what could be done. Mr. Gillespie said the buildable area becomes a big issue on this. There may be a little flexibility on how that is defined and wanted to discuss that before the board. Mr. Gillespie said there are wetlands on the property. He said there are some fairly significant trees and no matter what happens related to the subdivision it makes sense to clean up the forest and keep it healthy by taking certain trees down. Mr. Gillespie asked the board their opinion on the tree harvesting issue. Mr. Bell asked if their plan showed significant trees. Mr. Gillespie responded this plan does not, they don't have them individually located. He said the harvester has been on site and it was determined approximately 5 trees per acre could be taken down. He said they don't have a particular plan that actually shows each individual tree. Mr. Gillespie said they would hate to pull the application altogether because there's a certain amount vested in the town with fees and costs. So that's part of the conflict they have. Mr. Bell asked Mr. Gillespie if what they were saying is what they are intending to harvest is 5 trees per acre? And what kind of trees? Mr. Maggiolo responded oak and maple, not pine. Mr. Bell said our code requires you show significant trees during a subdivision application so the board has an opportunity to preserve the significant ones that we think are worth preserving and it sounds to him like not only have you not identified those, but are those are the exact ones you are planning on cutting down before you identify them.

Mr. Bell said that doesn't strike him as being consistent with the intent of the code. Ms. Olyha said when a tree harvester cuts down trees he takes specific ones so that it does not affect the other trees. When a subdivision is built the reason why we save the trees is because when they come through they tear every tree down and there's no trees left. Mr. Gillespie said it's more of a selective type of operation. Mr. Bell said but they are taking the biggest trees, right? Mr. Maggiolo said not necessarily. *Mr. Maggiolo was not using a microphone, therefore his entire comment was not audible.*

Mr. Maggiolo stepped up to the microphone and commented "he feels it would help the property because there's a lot of trees on the property. Mr. Bell said the motivation for the tree harvesting is to create lumber and make money, right? Not to create light and be good for the forest. Mr. Maggiolo said it would be both. Ms. Olyha said when a tree harvester takes the trees they don't take all the trees, they only take enough and it's not going to hurt the rest of the forest. Mr. Bell asked and why is that. Ms. Olyha said the tree harvester only takes the trees that are good.

Mr. Gillespie said certainly there is money that is generated. Mr. Bell said what he was quarrelling with is the characterization that the purpose of this is to do something good for the forest and added it doesn't strike him that is what is going on at all. He said it might be consistent with that, but that's not why it is being done and he didn't like the implication being that this would be a good thing to do for the forest and consistent with the intent of the code because he wasn't sure that was true. The intent of the code is to preserve large healthy trees which are the ones they are going to cut down. Mr. Bell said he was struggling with how to correlate with what the code requires which is preserve the

very ones they are talking about cutting down. Mr. Bell said if you want to come back in with a tree mapping that shows that there are 5 times as many that are just like that that are being cut down and consequently doesn't change the character, he thought the board would be receptive to that case. The board agreed. Mr. Gillespie said the town requires a tree harvesting permit. Ms. Livigni said we don't require it, the only catch she said she had was she knew there was an active subdivision application. Mr. Gillespie said because there isn't a formal permit they didn't want to go in there and cut trees down. Ms. Livigni said there is an existing logging or road there and asked how much disturbance would be created because now they could get into a permit situation. Mr. Maggiola said Old McDonald roads runs through the property and that's where they would do the logging, it's an old town road.

Mr. Bell told Mr. Gillespie they have to come back and show the board more detail on what they want to do, how many trees are out there, how many they are taking out and left so the board can judge what the impact is. Mr. Bell said the next issue is the building square and Mr. Gillespie said he didn't know if that was something that could be solved tonight. Ms. Valk said the town board had amended the code to take out any sort of allowance for steep slopes, environmental constraints and it is clear now that there can be nothing within that building square. Ms. Valk said there isn't any flexibility except in a cluster subdivision, the Planning Board has some authority to modify the size, in an R-120.

Ms. Livigni said the one thing that is missing in the new building square definition is what defines a steep slope. How big is the area that is calculated how steep the slope is. She said you can play with it and make it not be steep slope if you take a large enough area. She said the one thing that is slightly vague here is how you define a steep slope and that is something that would need to be explored. Mr. Artus said he's had this discussion and the town does not have a definition of a steep slope like many other towns do in their code. Mr. Artus said you could have a portion of a property that's all 10% slopes and you just have a rock out crop of maybe 200 sq. ft., that's a 30% slope and technically under the code, that would be a steep slope and would not be allowed in that building square. It is a town board issue and might be something the town board might want to think of in the future. Mr. Artus said the way many other towns have done it is you have a certain area of slopes greater than 25% that are contiguous. Mr. Artus said it is what it is right now but he thought at some point in the future, that is something the town board may wish to consider. Mr. Bell said the plan before the board pre-dates that change to the code. Mr. Gillespie replied correct. Mr. Bell said so that plan is not what we are going to see anyway. Mr. Gillespie said based on the new definition of that they will have to hone in on that because it has a dramatic affect on the project. Ms. Livigni said it would be her best recommendation that the applicant submit a letter to the town board asking for clarification. Mr. Artus said it also doesn't clarify whether it's between a 2 foot contour interval or a 10 foot contour interval. Mr. Gillespie said give me the rule and apply the rule, but if the rules are vague and it's tough.

Ms. Valk said there is no harm in sending a letter in to the town board at the Supervisor's attention. It always helps to get their attention. Mr. Gillespie said that is what they will do.

HARGRAVE SUBDIVISION & SPECIAL USE PERMIT – Proposed 2-lot subdivision located on Rombout Road containing 11.35 acres (Grid No. 6362-03-474392); circulate for Lead Agency

Mr. George Cronk appeared before the board. He said they went to the ZBA, but first submitted to the Planning Board. Mr. Bell asked if they were granted a variance and Mr. Cronk replied no. Mr. Cronk said the top portion of the property is in the Ridgeline which is a Type I action under SEQR. Mr. Bell said the board would then normally circulate for lead agency. Mr. Bell asked what the variance was for. Mr. Cronk said there are a couple of issues going on. The first is they had a request for an interpretation on lot width requirements because there are a couple of conflicts. He said they have not gotten a determination on that yet. Ms. Valk said they actually voted at the last meeting and said she was surprised he didn't have a copy of that determination. The determination was there was a jurisdictional issue but separately there was 2 lot width questions, one of them the Zoning Administrator had not ruled on therefore the ZBA didn't have any jurisdiction. Mr. Cronk said they requested an interpretation. Ms. Valk said Mr. McLaughlin needs to make an interpretation first before it can go to the ZBA because he is the first line of interpretation. Mr. Bell asked about the other lot width issue. Ms. Valk said there were 2 questions and she did not bring the file with her.

Mr. Bell said his recollection is there are 3 issues because he talked to Ken about this a while ago and that's why we were doing a coordinated review, but it had to go to the ZBA and they were going to try and walk down both roads simultaneously. So Mr. Bell said he wanted to know where they were with the ZBA issues.

Ms. Valk said there was actually a determination made by Mr. McLaughlin that was not appealed and then separately this minimum lot width at any point is the question he did not render decision on. There is a decision that the ZBA adopted. Mr. Bell summarized as it relates to lot width issues – one of them he made a ruling on and was his ruling that their plan did not adhere to code? Ms. Valk replied yes. Mr. Bell asked if that was appealed, Ms. Valk replied no. Mr. Bell said the one that was appealed was the one he did not rule on? Ms. Valk replied yes, there was a difference in the questions. Audrey Scott of her office actually wrote up the decision on that so she apologized she did not recall. Mr. Bell said with respect to the lot line widths it sounds to him like we need to get Ken to rule on one of them he has not ruled on yet and it also sounds like we have to back to the ZBA to appeal on the one he did rule on. Ms. Valk said that was her recollection. Mr. Bell said on both issues they can probably continue to walk forward while those processes take place. The third issue is related to what? Ms. Valk replied the building square. The zoning board issued a determination that it does not have the jurisdiction to modify the building square. Mr. Bell said he was appealing the fact that the application does not meet the town code's requirement for a building square and the ZBA basically took the position that's not something they can be appealed or they can

modify? Mr. Cronk said we asked for an interpretation. Ms. Valk said the ZBA asked for a legal opinion from her office and there is a line of cases that get into the point that the ZBA cannot invade the legislative authority of the town board. So the ZBA asked for a legal opinion, the legal opinion at her firm gave was that they don't have the authority to grant a variance on that particular issue. Ms. Valk said for a number of reasons which they agreed with that opinion and adopted by resolution.

Mr. Bell said so the application doesn't meet the code, the position of the town attorneys and therefore the ZBA is they don't have the authority to grant a variance on the building square. Mr. Bell said that sounds like we don't have a plan to circulate to anybody. Mr. Bayard said they actually do. He said when they originally circulated they actually provided 2 plans. One was addressing the building square actually moving the houses out of the building square and the 2nd one was to show the houses in the building square. He said he was not aware of the interpretation. Mr. Bell said the 2nd version they don't have the building square issue and the lot width issues stay the way they are, which are still both up in the air because the one you appealed we didn't have a ruling for and the one you had a ruling for you didn't appeal. Ms. Valk said which those matters can be handled while.....Ms. Valk said you can circulate for lead agency while that matter is being handled. Other than that, Mr. Bell asked if we had a complete application. The answer was yes. The planning board voted to circulate for lead agency with the plan that does not have the building square issue. Mr. Artus said the board just needs to declare their intent to be lead agency. Ms. Olyha made a motion, seconded by Mr. Straub and the motion carried unanimously. CIRCULATE FOR INTENT TO BE LEAD AGENCY.

BARGER SUBDIVISION & SPECIAL USE PERMIT – Proposed 3-lot subdivision located on Pond Gut Road containing 22 acres (Grid No. 6562-02-819904)

Mr. Mark Olson appeared before the board. Mr. Bell said they have the same issue with the building square and asked if they went to the ZBA. Ms. Valk said the public hearing was not closed so they did not rule. Mr. Bell said this is the exact same issue where you are asking the ZBA to grant a variance against the building square. He said it sounds like they can't do that. Ms. Valk said they have not ruled yet but legally since it is not a factual determination they have rendered they don't have the jurisdiction and it would be the same determination.

Mr. Bell said he would tell this applicant the same thing he told the applicant before, which is if the ZBA has taken the position that they don't have the jurisdiction to change that, then we don't have a map to circulate to anybody because it doesn't meet zoning and it's apparently not appeal able to the ZBA. Mr. Olson asked if that was dependent on the definition of the steep slope. Ms. Valk said that's a different question. Mr. Bell said the issue with the building lot is that the ZBA ruled in their case that they don't have the authority to grant a variance to that and if they don't have the authority to grant the variance then all you have is a plan that doesn't meet zoning and we are not going to circulate that to anybody because we can't approve it regardless of what all the other agencies think. Mr. Bell said that needs to be fixed before the board can take any action whatsoever. Mr. Bell asked if there were other issues. Ms. Livigni said similarly they

can write a letter to the town board requesting clarification on slopes which is their encumbrance. Mr. Bell said that's the same as Country Squire Ms Livigni said the difference is that Country Squire wasn't asking us to circulate. At this point with what they have they don't have anything to circulate. Ms. Livigni said she didn't think on this site they could get building squares without an encumbrance. Mr. Olson said the intent on this plan is to utilize clearance on the property. There is an existing logging road that runs from Pond Gut Road up to the back lot. They don't want to deviate from that road and they don't want to further clear the property and they don't want to take down any more trees. The applicant wants to keep his property the way it is and wants to have a house on the property. Ms. Livigni said in other words you don't want to move the building squares so she said they are going to need to hold off until there is a definition of steep slopes. Ms. Valk said assuming once it is defined it assists them. Ms. Valk said she didn't know how large their steep slopes were. Mr. Bell said the building square doesn't fit because of an interpretation of the encumbrances and that could get clarified and change whether that is true or not, and asked if that is what they were talking about. Ms. Livigni said yes, but these steep slopes are a different nature than the Country Squire but it still comes down to clarification of the definition. Mr. Bell said it sounds like that is the approach they need to take, is to go to the town board to get them to more clearly define what those are under the hope that when that happens their building square will no longer be encumbered. Mr. Artus said we don't know, he hasn't seen the plan and what percentage slopes they have or what the steepness is. Mr. Bell asked who determined the building square didn't fit. Mr. Artus replied probably Ken. Mr. Olson said there was also an interpretation about lot width versus frontage. Mr. Bell asked if that was the same issue as the other one. Ms. Valk said it's similar except because the 2 applications are requesting very different types of variances, the result of the question is different. Mr. Bell said he meant was the lot width conflict the same where we have to different parts of the code. Ms. Valk said it was the same type of issue because 240-29 has some language that is left over from the pre 2006 zoning, extra language that should be deleted, but then there is also an inconsistency within the table itself. The ZBA has not asked us to work up a proposed resolution for their consideration, they would probably be doing that at the January meeting, so she really couldn't answer that more specifically.

Mr. Olson said the other encumbrance is the ridgeline which basically the entire property is in. Mr. Bell said that's not something that goes to the ZBA, that's a permit from the board. Mr. Bell said it sounds like their next step is to try and get clarification and appear to the town to clarify that steep slopes definition. Mr. Artus said there is no definition of steep slopes and added he didn't know if they would want to take that up. Mr. Bell said it seems to him that has to be clarified because if there is no definition and the ZBA won't handle an appeal based on it then we are in a vague position and puts the applicant in a position where there's an interpretation that cannot be appealed and that doesn't seem right. Ms. Valk said the issue with the ZBA is they cannot vary the size of the building square. If you are looking for an interpretation of inconsistencies within the code, and this is an issue where it is not an inconsistency, the term is going to have whatever it's natural meaning is and she said she didn't know if there was an industry standard of steep slopes but from what she was hearing is that it should be specified this is how you get a steep slope in the Town of LaGrange. Mr. Bell said we don't have a legal plan to

circulate. Ms. Livigni said if they don't to change the building square, that is their only recourse at this time. Ms. Valk said the January meeting of the ZBA is going to address the lot width question. They will also be issuing a determination on the building square but being that they just rendered that opinion on Hargrave legally they would be bound to render the same decision on this application. They do not have the jurisdiction to modify the square size. Ms. Valk said with the steep slopes they are talking about an amendment of the code by the town board so that takes a minimum of a month once they decide to do it because you have to circulate to County Planning and surrounding municipalities and published on so many day's notice. Mr. Olson said they have no direction until that is made anyway. He continued to comment but he was not audible because he was not using the microphone. Ms. Livigni responded you are waiting for town board clarification. Ms. Valk said she thought his question was he wanted to appeal the steep slopes issue to the ZBA. Ken has made the determination that the building square doesn't fit. The question is then what is the industry standard of a steep slope and she didn't know if it was going to help them. She said she didn't know how one calculates a steep slope. Ms. Livigni said what makes this different from Country Squire is they have little outcrops throughout the plateau. This one is a consistent slope that is steep, so it's kind of a different animal. There's 2 different land types they are looking at here and the best thing would be is to see if the town board would consider coming up with a clarification or definition. Mr. Bell said but that might not even help. Ms. Valk said that's the point they are trying to make is that may not solve this. It may or may not be of assistance depending on the definition.

Ms. Livigni asked if this was R-120 and if you can move the square and retain where you want 51% of the house in that square and get away from the steep slopes, you don't have to clear that whole square. Mr. Olson said he understood. Mr. Barger said he didn't have to clear anything to put any of the houses in, it's all open. Ms. Livigni said she is trying to explain that if they can move the square in such a way that you get away from what appears to be the obvious steep slopes. Mr. Olson said they have played with it and moved it around. He said it's a unique piece of property.

PINE HILL ESTATES II SUBDIVISION & SPECIAL USE PERMIT – Proposed 2-lot subdivision and Special Use Permit located on Cramer Rd. containing 7.96 acres (Grid No. 6163-02-630549 & 663539)

Mr. John Andrews of Rohde Soyka and Andrews appeared. He said they are proposing to subdivide a 7.99 acre parcel into 2 lots of essentially equal size, one deriving its frontage off Cramer Road and one off Overlook Rd. The lots will be served by individual wells and septic tanks and they had a public hearing and received comments from both Walter and Mr. Bolner. He said they addressed the comments and there are some minor administrative issues but the biggest issue is they do not have the required lot frontage. This is a R 40-6-80 zone and since they have wells and septic tanks they need 75 foot frontage on a town road and they do not have that. They went to the ZBA. He showed the board the existing lot that is going to be made bigger, and it only has 61 feet and they only have 43.9 on Old Overlook. The ZBA deferred action on granting them the lot frontage variances for basically 2 reasons. They wanted to make a sight visit because

of where this was, it's kind of substantial, they wanted to see the neighborhood. And second since this was an action in front of the Planning Board, had progressed through the public hearing and no SEQR determination had yet been made, it was the recommendation of Ms. Valk that they come back to the board and see if they could get a SEQR determination so the ZBA could take this up at their next meeting. They did conduct their site visit and most of their concerns were resolved. Mr. Andrews said it is kind of hard to discern where the property line is and where the existing home's rear yards end. He said he was here simply for a SEQR determination, realizing the board cannot move forward until they get the ZBA.

Mr. Bell asked Mr. Artus a questions, it was not audible, however Mr. Artus's response was yes, that is correct.

Mr. Straub 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 identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Rosenfeld seconded it and the motion carried unanimously. **NEGATIVE DECLARATION**

Mr. Andrews said the ZBA has them on for their next meeting January 3, and asked to be placed on the Planning Board's agenda for consideration of preliminary, if possible. Mr. Bell replied sure.

Mr. Straub made a motion to adjourn the meeting at 9:00 p.m., seconded by Ms. Olyha and the motion carried unanimously. **MEETING ADJOURNED.**

Respectfully submitted

Eileen Mang
Planning Board Secretary