

**TOWN OF PATTERSON**  
**PLANNING BOARD MEETING**  
**February 5, 2015**

**AGENDA & MINUTES**

	<b>Page #</b>	
<b>1) Wilkins Motorsports – Public Hearing</b>	1 – 11	Public hearing opened and closed: Board tabled application.
<b>2) Mancini Subdivision – Final Approval</b>	12 – 13	Board approved subdivision with conditions.
<b>3) Fox Run AARP – EAF Review - Part 3</b>	13 – 34	Discussion of trees/plantings and of EAF Part 3.
<b>4) Other Business</b>		
<b>a) Zoning Code – Restaurants</b>	34 – 48	Discussion of proposed zoning amendment to restaurants.
<b>b) Hair Salon – 172 Fairfield Drive</b>	48 – 53	Discussion of hair salon in Putnam Lake.
<b>c) Minutes</b>	53	Approved December 4, 2014 minutes.
<b>d) Patterson Fire Department</b>	54 – 56	Discussion of Fire Department moving forward with the ZBA.

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**TOWN OF PATTERSON  
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**ZONING BOARD OF APPEALS**

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Mary Bodor, Vice Chair  
Marianne Burdick  
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**PLANNING BOARD**

Thomas E. McNulty, Chairman  
Ron Taylor, Vice Chair  
Michael Montesano  
Edward J. Brady Jr.  
Robert F. Ladau

**Planning Board  
February 5, 2015 Meeting Minutes**

Held at the Patterson Town Hall  
1142 Route 311  
Patterson, NY 12563

Present were: Chairman Thomas E. McNulty, Board Member Ron Taylor, Board Member Edward J. Brady, Jr, Board Member Robert Ladau, Rich Williams, Town Planner, Ted Kozlowski, Environmental Conservation Inspector, Ron Gainer, Town Engineer and Michael Liguori, Town Attorney.

Chairman McNulty called the meeting to order.

The meeting began at 7:00 p.m.

Sarah Mayes was the Secretary and transcribed the following minutes.

There were approximately 12 members of the audience.

Chairman McNulty led the salute to the flag.

**1) WILKINS MOTORSPORTS – Public Hearing**

Mr. Adam Wilkins was present.

Chairman McNulty: First on the agenda tonight is Wilkinson Motorsports [misspoke. Meant to say Wilkins Motorsports] public hearing. Sarah, is every... You have all the mailings?

The Secretary: Yes.

Chairman McNulty: Everything got sent?

The Secretary: Yes. We got all of those.

Chairman McNulty: Okay. You want to call the public hearing?

The Secretary: Sure.

The Secretary read the following legal notice:

**NOTICE IS HEREBY GIVEN** by the Town of Patterson Planning Board of a public hearing to be held on Thursday, February 5, 2015 at 7:00 p.m. or as soon thereafter as may be heard, at the Patterson Town Hall, 1142 Route 311, Patterson, Putnam County, New York to consider an application entitled **Wilkins Motorsports Site Plan Application for a motorcycle sales and repair business**. The property is located at 2237 Route 22 (C-1 Zoning District), Patterson, New York. All interested parties and citizens will be given an opportunity to be heard in respect to such application.

Chairman McNulty: Okay. This public hearing is open. Is it Wilkinson. Is that...

Mr. Adam Wilkins: Wilkins.

Chairman McNulty: Wilkins.

Mr. Wilkins: Yeah.

Chairman McNulty: You want to come and explain what you're doing here? You operate the business now?

Mr. Wilkins: Yes.

Chairman McNulty: You're a tenant?

Mr. Wilkins: Correct. I'm a tenant. It's a repair and sales business. All motorcycles and ATVs and we're looking to get a full site plan so I can add some...I've had a pretty extensive project in fixing up the property so I'm going to continue my efforts and I would like to put up a shed and that is why I'm here.

Chairman McNulty: Mr. Wilkins came in to apply for...put in a shed and we realized there was no site plan on the property and to get some kind of record, we were going to use a piece of a survey that gets this plot established as a commercial area; some kind of record of it. And we are looking to waive some of the requirements in this site plan as he's a leasee and just get the property on record as we clean up properties as we move along in the future. Is there anybody in the public here that would like to comment tonight on this? Please come up and state your name.

**Rita Herman:** My name is Rita Herman.

Chairman McNulty: Okay. Just say it into the microphone, please.

**Rita Herman:** Rita Herman. We have the business that's right next door to the property where Wilkins would like to put up his building and he's barely 20' off our property line doing the same kind of business we're doing. We feel it's encroachment. He's selling machines. We sell motorcycles. He wants to do motorcycles. There's not even 20' between our buildings. It's not right.

Chairman McNulty: well, he does meet the setbacks. When in our review, our review Rich, if I'm not wrong, the setbacks for the zoning are met.

**Rita Herman:** Is this effective in this case? A thousand feet.

Chairman McNulty: I don't know what this is [referring to a paper Mrs. Rita Herman handed to the Board].

Board Member Taylor: Code.

**Rita Herman:** It's out of the Code book.

Chairman McNulty: Well, what Code?

Board Member Taylor: Our Code.

**Rita Herman:** Your building code.

Chairman McNulty: But do you know the specific code number or anything?

**Rita Herman:** No.

Rich Williams: It's...

Chairman McNulty: It says no public garage or automotive dealership shall be located within 1,000' of any other public garage, automotive dealership or gas station as measured between the closest properties.

Rich Williams: That is correct. That is a section out of special use permit requirements. Uh...I'm drawing a blank as to which one. But, in 2005 we put a section of Code in that now requires public garages, gas stations, car dealerships and similar uses to have a 1,000 foot setback. Where it doesn't come into play here is both uses, both properties, have established public garages prior to the adoption of that section of our Zoning Code. So both Rita Herman and her husband have a public garage that has been there since the [19]80s...

**Rita Herman:** Forty years we've been there.

Rich Williams: probably before.

Chairman McNulty: So it's a...

Rich Williams: And likewise...

Chairman McNulty: pre-existing, nonconforming.

Rich Williams: and likewise, John Moriarty has been operating a public garage. He's now sold the property, but John Moriarty was operating a public garage since the [19]70s on the adjacent site. So they've both there for many, many years. So they're both considered pre-existing, nonconforming uses of the property and that's why this 1,000 foot setback doesn't come into play. Now again, right next door another piece of property now owned by John Moriarty. He currently has an application before the Zoning Board of Appeals for a public garage. So there are three right in a row if the ZBA thinks it's appropriate.

Chairman McNulty: But it's not an existing garage, that other property.

Rich Williams: No.

Chairman McNulty: No.

Rich Williams: The third one is not.

Chairman McNulty: Yeah. You see, what happens when he's pre-existing, if another type of business came into this, the Wilkinson's Sports [misspoke: Referring to Wilkins Motorsports] then it would change, if I'm right. You know, if I'm not right stop me. Then we could enforce that Code, correct? Once it changes use.

Rich Williams: If it changes use to something other than a public garage legally, say to a retail area whether it's selling flowers...

Chairman McNulty: within the Zoning Code.

Rich Williams: and it stays that way for a year, then they could not go back to a public garage.

Chairman McNulty: Yeah. Does that clear up...

**Rita Herman:** Now...

Chairman McNulty: your question?

**Rita Herman:** Well, the building was empty for a year and a half. Route 22 Cycle was there, then they moved to White Plains and there was no one in that building for a year and a half. So, I'm thinking that that pre-existing use would go away during that period, no?

Chairman McNulty: Well, there's no other established business to change it at that point. Mike, you might want to comment.

Mike Liguori: Yeah, it's a little bit more nuance because what the case law says is that you can stall a pre-existing, nonconforming use for some time, it just really depends on...Some of the things that the courts look at are: has the owner taken some affirmative action to eliminate the intent to use, you know, to get rid of that use? The area where it's most litigated is gas stations. You know, have the pumps been removed? Have the tanks been taken out of the ground? Look at Justin's Auto: that piece of property. That's one where we've had some fairly extension...extensive legal research on that if they tried to be a gas station again or public garage. Remember, we had that just a couple of years ago and we resolved it on the...We had looked at that to see if they had taken affirmative actions and, in particular, to selling gas it was clear that, you know, they took the pumps out. They took the tanks out of the ground. That's a pretty significant action on behalf of the landowner. We'll...I'll certainly take another look at the Code section. We have the comment on the record. So, we'll certainly take a look and see if...We'll examine it.

Chairman McNulty: To see if it does stall the change of use.

Mike Liguori: Right.

Chairman McNulty: Or change it.

Mike Liguori: Yup.

Chairman McNulty: Okay.

Rich Williams: We've had some internal conversations about this as well. I have not been able to get a statement out of the Building Department that the use ceased. So that's one of the difficulties we have here.

Mr. Wilkins: Action Autobody actually never...Route 22 Cycles left but Action Autobody, in that year and a half that you're speaking of, they continued to run their business out of there. So, it was never halted.

Chairman McNulty: Never completed vacated.

Mr. Wilkins: Never.

**Rita Herman:** Hmm.

Chairman McNulty: So you can see the quagmire of laws here.

**Rita Herman:** So also, if you don't give...We've been paying \$30,000 a year taxes. For 40 years now we've been paying. So, if you let him move next door and I lose 10% of my business, are you going to lower my taxes...

Mike Liguori: No.

**Rita Herman:** to accommodate that?

Mike Liguori: No, but I will say if you...See...

**Rita Herman:** You know what I'm saying? It's not fair.

Mike Liguori: I...Well, just understand that if...With the regulation of the 1,000 feet distance in place, let's say someone were to get a variance...

**Rita Herman:** Mmhmm.

Mike Liguori: to have a new garage that was within the 1,000 feet. You know, I'd be at that public hearing because that's where the law would be altered to accommodate somebody.

**Rita Herman:** Mmhmm.

Mike Liguori: Which is a little different than the particular situation that's here. But when you look at zoning in general, if you're in a zoning district where auto sales and service is a permitted use, you could have ten in a row right next to each other and that's perfectly legitimate.

**Rita Herman:** Right. As long as they got their...

Mike Liguori: It's exactly...

**Rita Herman:** space, correct?

Mike Liguori: Well, no, no, no. Even...Let's, you know, take out the 1,000 foot setback. Let's just say you're in a zone where retail is permitted while everyone next to you is doing retail.

**Rita Herman:** Mmhmm.

Mike Liguori: So it's hard to argue that, you know, you're entitled to something in addition because of a loss of business when it's generally acknowledged that if it's a permitted use in the zone you can have competitors. That's why you have Home Depot and Lowes across the street from each other.

**Rita Herman:** Right.

Mike Liguori: That's what they do. It's very common. But again, we'll examine the particular, you know, we'll take a look...

Chairman McNulty: Okay.

**Rita Herman:** I would. Or he could move a half mile down the road. I don't care.

Mike Liguori: No, I know. But it's...

**Rita Herman:** Not off my backside stoop.

Mike Liguori: It...

**Rita Herman:** It's not right.

Mike Liguori: It...

**Rita Herman:** I understand.

Mike Liguori: Yeah.

Chairman McNulty: It's the pre-existing. You can see where we're at.

Mike Liguori: Yeah, these guys are not, you know...If it was the Zoning Board and they were determining a variance, then, you know, then you'd say, alright well look. You know, in the various things you're are going to look at, you're going to look at impact to adjoining properties and, you know, you may even consider something like, you know, the impact to the businesses. But they're not varying the law for the project. So it's a big difference between that and...

**Rita Herman:** I know we have customers that come that maybe haven't been there in a year. They pull in his driveway: they think he's an extension of me.

Mike Liguori: That's how you're properties are situated...

**Rita Herman:** yup.

Mike Liguori: you know.

Chairman McNulty: Yeah, I know. I'm familiar. They are close there.

Mike Liguori: Yeah.

**Rita Herman:** His...

Chairman McNulty: It's...

**Rita Herman:** his driveway is...

Chairman McNulty: it's been a shop...

**Rita Herman:** 2.5' off of my property line.

Chairman McNulty: I know. It's just it's been a shop there forever. I never...

**Rita Herman:** Yeah.

Chairman McNulty: really thought about the two together competing like that.

Mike Liguori: Yeah.

Mr. Wilkins: I mean, what happens when you go buy a car? There are...

Mike Liguori: It's no different.

Mr. Wilkins: There are within a quarter mile radius there must be a dozen dealerships.  
Danbury, wherever.

Chairman McNulty: That's a different jurisdiction, though. A different code. So we...

Mr. Wilkins: No, I'm just like...

Mike Liguori: No, but we could have that here.

Mr. Wilkins: Right.

Mike Liguori: In theory. You know, like if...

Chairman McNulty: Sure.

Mike Liguori: if automotive sales were permitted from let's say, you know, Mobil all the way up to where the Chevy dealership was in Pawling...

Chairman McNulty: Mmhmm.

Mike Liguori: or is in Pawling. I mean, it could be all car dealerships. If it's permitted in the zone, it's permitted: you could have competition, you know.

Chairman McNulty: Yeah.

Mike Liguori: But look, these guys are... We get your point, you know, that you can...

**Rita Herman:** Thanks.

Mike Liguori: have your cup of coffee and spill it on the next guy's property.

**Rita Herman:** Yeah.

Mike Liguori: So, we'll take a look at that.

**Rita Herman:** Okay, thank you.

Chairman McNulty: Okay.

Board Member Taylor: Does that come into consideration of what we're reviewing tonight? We're just trying to establish a site plan.

Mike Liguori: Well...

Chairman McNulty: Well, a site plan is applied for a particular use.

Mike Liguori: Yeah, that's... What we'll do is, for tonight, you know, if you guys are okay with... If there's more public comment, I mean, you're within your rights to close the public hearing and I think if you just give Rich and I some time to make sure that the "i"s are dotted and the "t"s are crossed then...

Board Member Taylor: Okay, just...

Chairman McNulty: Yeah, I got you.

Mike Liguori: you guys would...

Board Member Taylor: So we'll delay...

Chairman McNulty: Is there anybody else in the public that has any comment? Mr. Wilkins?

Mr. Wilkins: No.

Chairman McNulty: Okay, I make a motion to close the public hearing.

Board Member Brady: Second.

Chairman McNulty: All in favor. *Motion carried by a vote of 4 to 0.*

Chairman McNulty: Okay, in light of the public comments, we did have a resolution together but I think it's worthy to hold this off at this point to make sure we're moving in the right direction and we don't make a bigger mess.

Mike Liguori: Yeah, you guys have your work session coming up in...

Chairman McNulty: Yeah.

Mike Liguori: what, two weeks.

Chairman McNulty: Mmhmm.

Board Member Taylor: And then I had a question for you, Mike, on the...what he's proposing and submitting as his site plan. It's actually a survey.

Mike Liguori: Right.

Rich Williams: Well, it's not...

Board Member Taylor: They have...

Rich Williams: a survey. Let's be clear about that. To be a survey, it would need the signature and seal of a surveyor on it.

Board Member Taylor: Well, it does.

Rich Williams: It shouldn't.

Chairman McNulty: Well, it doesn't have the seal, but it...

Board Member Taylor: Show him the other half of it.

Rich Williams: That's what he submitted.

Chairman McNulty: This one has the existing conditions.

Board Member Taylor: Well, you've got to look at the rest of it.

Chairman McNulty: This is without the shed.

Rich Williams: Alright, well where'd you get this from?

Chairman McNulty: From...In my basket.

Board Member Taylor: It's the other half of that.

Rich Williams: Alright, because the only thing he should be submitting is that.

Board Member Taylor: Well, but that's my question. If he...If this is a legal survey or his document...

Rich Williams: Not without a surveyor's signature and seal on it.

Board Member Taylor: So you're saying that he could use a Xerox of this and it doesn't violate the copyright law of the surveyor? That's what I'm asking...

Rich Williams: Well, I'll let Mike [Liguori] answer that.

Board Member Taylor: a lawyer.

Chairman McNulty: Well, Ron may be able to answer that.

Board Member Taylor: Or...

Ron Gainer: I'll let the attorney.

Board Member Taylor: Or can he submit the survey and then submit his own site plan as an overlay to the survey and not violate the copyright in that way?

Rich Williams: And to be clear, it wasn't a survey to begin with.

Board Member Taylor: Well, whatever it is, it's signed by a surveyor.

Chairman McNulty: Well, it's not stamped though. But it is signed.

Board Member Taylor: Well... Yeah.

Rich Williams: Signed by who?

Chairman McNulty: Bergendorff.

Rich Williams: Really?

Board Member Taylor: But some of it's also missing.

Chairman McNulty: The shed is not on that one.

Board Member Taylor: No, but I'm... Here. There's a section of...

Chairman McNulty: Oh.

The Secretary: The one with the shed.

Board Member Taylor: that's missing here, so there may be a stamp on that section.

The Secretary: They have a different one with the shed on it.

Mike Liguori: Ron, I don't have the...

Rich Williams: Yeah, they've got a different one with the shed on it.

The Secretary: Right.

Chairman McNulty: That's just...

Rich Williams: The one with the shed is from Harry Nichols.

Mike Liguori: I don't have the education law committed to memory...

Board Member Taylor: Okay, I just...

Mike Liguori: That's...

Board Member Taylor: This is something you should look into, too. You know, because, I mean, surveyors has rights, too. You know, so...

Chairman McNulty: But does that affect us at...If it's not stamped, I didn't believe it was...

Mike Liguori: No, you would just...

Chairman McNulty: a legitimate survey. That's all.

Mike Liguori: No, you guys are looking at your site plan requirements and you have the right to waive whatever requirements you want.

Chairman McNulty: Okay. Alright, does that answer your question, Ron?

Rich Williams: No.

Mike Liguori: No, no. I'll get...I'll pull the section of education law and circulate it.

Chairman McNulty: Oh, okay.

Mike Liguori: So that...What covers the surveyors.

Chairman McNulty: Alright, so you have your homework on this one.

Mike Liguori: Yeah.

Chairman McNulty: So Mr. Wilkins, tonight we're not going to be able to make a resolution. We'll research this. This is why we have the public hearings.

Mr. Wilkins: Yeah, that's fine.

Chairman McNulty: To bring things to light and...

Mr. Wilkins: Yeah, I have no problem with that.

Chairman McNulty: And we'll move forward and we'll talk about it at the next work session.

Mr. Wilkins: Sounds good.

Chairman McNulty: Okay.

## 2) MANCINI SUBDIVISION – Final approval

Chairman McNulty: Okay, next we have Mancini Subdivision, Final Approval. Rich, did you have any comment on this? I know there was some easement...

Rich Williams: At the direction...

Chairman McNulty: still outstanding.

Rich Williams: Yeah, at the direction of the Board I prepared a resolution based on... Well, and it has some condition in there based on my review of the latest subdivision plat and deficiencies in the plat that are easily addressed, I believe. I've been working with the Applicant to get them all squared away. So, you do have a resolution.

Chairman McNulty: Okay, we looked at this. I thought this was going to be quick and easy when Curt [misspoke - referring to Rick Lamontagne] first came in front of us. I think it's a year now, huh.

Rich Williams: It's taken some time, yeah.

Board Member Taylor: Yeah, it's quick and easy.

Chairman McNulty: Does anybody have any comment on this or can we move to the resolution?

Board Member Taylor: It looks good to me.

Board Member Brady: That's right, we had the public hearing already.

Chairman McNulty: We had the public hearing. We've done SEQRA.

Board Member Brady: I think there's a list of conditions.

Chairman McNulty: Okay. I'll make a motion on this in the matter of the Mancini... is that what's called? Mancini Subdivision. I'd like to move to the Board to declare this... oh no, that's a minor/major. Excuse me. I make a motion on the Mancini... This is a subdivision approval, correct.

Rich Williams: Yes.

Chairman McNulty: Or site plan?

Board Member Taylor: No, subdivision.

Chairman McNulty: Subdivision. We've already declared major/minor, haven't we?

Rich Williams: Yes you have.

Chairman McNulty: So it was minor. Okay. So I make a motion in the Mancini Subdivision to approve this subdivision in accordance to the general conditions 1 through 6 and the special conditions outlined in the resolution 1(a) through 1(i). Do I have a second?

Board Member Brady: I'll second it.

Board Member Ladau: Second.

Chairman McNulty: All in favor? Motion carried by a vote of 4 to 0.

Rich Williams: Now, there's one more part of this which I didn't give you tonight because I'm waiting for some information from them. We also need to do a resolution on site plan. But, you know, that we could put off to the next meeting.

Chairman McNulty: Okay, so the subdivision is now approved.

Rich Williams: Yes.

Chairman McNulty: So they can move forward...

Rich Williams: And they can move forward...

Chairman McNulty: with the site plan.

Rich Williams: with that. They can do their filing because they're anxious to get this closed.

Chairman McNulty: That's why I was confused at first there: if it was site or subdivision. Okay.

### 3) FOX RUN AARP – EAF Part 3

Mr. Robert Marvin, Marvin & Marvin, was present.

Chairman McNulty: Next, we have Fox Run: Active Adult Residential Project. We're looking to discuss EAF Part 3. Rich has made an outline to the comments based on the EAF and review from the Board and the items we've highlighted as we think are significant.

Mike Liguori: Bob, you want a hand [referring to putting up the plans].

Mr. Bob Marvin: I think I can do it. There we go.

Chairman McNulty: Hello, Mr. Marvin. How are you doing?

Mr. Marvin: How are you? Good morning. My goodness, a little passed that. Good evening. If there's a new memo, Rich, I don't think I've seen that yet.

Rich Williams: What I did is I shared with the Board a Part 3...Part 3 of the Environmental Assessment Form that I prepared on behalf of the Board. I was waiting to get some feedback from the on that.

Mr. Marvin: Okay. Alright. Well, I'll touch a few topics here and then, obviously, whatever questions or whatever you have we'll do our best to answer. Curt, who's been generally handling

most of this, is not here tonight so I'm doing my best to pinch hit a little bit here on some of the things that are really more in his area of expertise. But I think we can make some progress. When we were here the last time, there were sort of three or four basic topics that we were talking about. One was, at that time, Curt showed you where he relocated a couple of the buildings in this area of what was proposed earlier: moving them down away from the ridgeline. And I think there was general satisfaction in that...the way he had done that in preserving the ridgeline as much as possible, which was almost entirely, I think. But, the question came up then: What about the large oak trees that were along the ridgeline? What kind of impact would be created by the plan as designed then? Somebody from Zarecki's office went out and marked those trees to see where they were in relation to this new layout. And there were, I think, seven...

Ted Kozlowski: Eight.

Mr. Marvin: may...Eight.

Ted Kozlowski: Eight.

Mr. Marvin: Okay. I missed one then somewhere. We got one, two, three, four, five, six, seven...Anyway. I believe they're all preserved but two of them are in an area where until we actually get out there and get in the ground and the buildings, can't be sure that two of them will be saved. But all the other ones are...

Ted Kozlowski: When it's time to for comment...

Mr. Marvin: (inaudible) jeopardy.

Ted Kozlowski: When it's time for comment, I got some...

Mr. Marvin: Okay.

Ted Kozlowski: things I'd like to say, but...

Mr. Marvin: Alright. Well anyway, that's my understanding that we have them marked here.

Chairman McNulty: Mmhmm.

Mr. Marvin: One, two, three, four, five, six...You're right. There are eight identified on here. Six of them are clearly out of the area where they would have to come down. The other two, by moving things around the best the engineers could, they think they could be preserved. Those are the two that I'm indicating right now with my fingers. But what Joe [Zarecki] tells me tonight is you can't 100% positive that those two will stay until you really get out there and, you know, start building. So I don't want to make a representation that we may not be able to carry through. But that the way it looks right now, okay. The other...We also talked about the flows...wastewater flows and I think that the data that was provided last time satisfied the Board that even at peak flows, that plant is not taking the full design amount that it can from the existing Fox Run. So there is sufficient additional capacity to handle what we're...what would come from this 80 unit plan. That's not a change. That's just summarizing, I think, where we were last time.

Chairman McNulty: And I think that...Rich, did you put together something on that? Or DMR that's for the rest...

- Rich Williams: I took a look at them and then Ron circulated an email today...
- Chairman McNulty: Yeah, I didn't get to see Ron's email.
- Rich Williams: and he had taken a look at them and I think...
- Chairman McNulty: You guys concur we're below the...
- Ron Gainer: Yeah, everything looks...
- Chairman McNulty: maximum use.
- Ron Gainer: Looks like there's sufficient reserve capacity to permit the project to receive.
- Board Member Taylor: Okay, that's all I need.
- Mr. Marvin: Okay. There was also some discussion about the sight lines and stuff from the Fox Run intersection with Bullet Hole Road. Mike Hartman last month, is our traffic consultant here, he showed you, you know, some proposed changes that could be made as you come out and to the left. And there was some questions about what about off to the right. And I'll let him address that. But I think the Board has seen some revisions that he made that I think you had available at your work session.
- Chairman McNulty: We did look at it at the work session.
- Mr. Marvin: Okay, well...
- Chairman McNulty: It was a nice improvement, I thought.
- Mr. Marvin: Okay, well I'll let him come up and address those since he's here and he obviously can do that better than I can do it. The other concern I think that the Board had was, and this has been sort of an ongoing concern for a while with this being an over 55 [years old] community, is well, what about school kids, you know. And I have told you for several years now that the data shows that when you have these communities the number of school kids is very, very small. But I can now tell you that we can guarantee that there would not be any school kids residing in...high school aged kids residing in the community because my client has agreed to, when it comes time to file, you know, the declarations and covenants and the governing documents of the HOA which would govern this condominium association, he would put in a prohibition that there can be no residence under the age of 19. So I think that that will satisfy, or hopefully will, I don't know how else we could, satisfy this Board that we're not going to have any impact on the school district when this plan is approved and built out because the governing documents will, and we can put that in any kind of approval that you want, that they'll have restrictions that will prohibit residents. Somebody could be a guest, you know, for over the weekend to visit Grandpa or something like that. But no residents under the age of 19.
- Board Member Taylor: That took care of that.
- Chairman McNulty: Yeah. Well that's...
- Board Member Brady: That's a...

Chairman McNulty: That's a big item that we had on the list.

Board Member Brady: Yeah.

Chairman McNulty: That's good.

Mr. Marvin: Right. Okay well...

Board Member Brady: That's good. Good to hear.

Board Member Taylor: Alright, back on the ridgeline, just one question. We'd ask for a cross section.

Mr. Marvin: Is that here, Joe. I'm going to let Joe show you that one.

Board Member Taylor: Bring Joe up here.

Joe Zarecki: Yup.

Board Member Taylor: The question...I have a question on...You gave us the cross section.

Joe Zarecki: Okay.

Board Member Taylor: But you didn't...You put Building 12 on the cross section whereas Building 11 is the highest.

Chairman McNulty: Can you point out Building 12 over there?

Board Member Taylor: Building 12 is...

Joe Zarecki: This is [Building] 11.

Board Member Taylor: That's 11. Twelve is in the middle there.

Joe Zarecki: This one?

Board Member Taylor: Yeah.

Joe Zarecki: Okay. I don't know if we put it on there or not.

Board Member Taylor: Well, that's what he's got it labeled as: 12. Now whether it's mislabeled...

Chairman McNulty: What's the...He's got the slab at 789.

Mr. Marvin: Well, let's see what the contours on it are.

Joe Zarecki: 789. Here's 789. Maybe he had it mislabeled.

Board Member Taylor: So he mislabeled it then.

Joe Zarecki: It's mislabeled.

Board Member Taylor: Okay, then that's what I wanted to know. It didn't make sense.

Chairman McNulty: Joe, while we have you here, one thing on this latest plan that came out that we noticed is on the topo, I guess, on the west side of the complex where you moved the buildings, there's some pretty steep slopes along the driveway. Just trying to find out if were to draw a cross section through the building and a driveway, how you would manage those steep, steep slopes. I think I had it outlined here somewhere. It looked like a pretty challenged way to place a driveway garage entrance and a steep area.

Joe Zarecki: Well, I don't...I mean I haven't now to be honest with you because...

Chairman McNulty: Okay.

Joe Zarecki: we've got the guys in the office working on this. However, there are requirements when it comes time to site plan approval that we would have to maintain driveway grades and...

Board Member Taylor: Right.

Joe Zarecki: I'm sure that would be an issue that we would take care of during site plan approval. I mean, I couldn't tell you right now what we have there to (inaudible) you...

Rich Williams: It would be reflected on the grading plan.

Joe Zarecki: It would be reflected on the grading plan.

Chairman McNulty: I agree. It just looked like it was...

Joe Zarecki: Yeah, it...

Chairman McNulty: a tough call to make happen.

Joe Zarecki: I'm not denying that, I'm just saying that I wasn't...I didn't look at the grading on this one, but when it comes time for each individual site of...

Chairman McNulty: These areas I haven't...In (inaudible – coughing) it just looked like they were going to be very tough.

Joe Zarecki: We're into tough.

Chairman McNulty: Okay.

[Laughter]

Chairman McNulty: That's what we'll be looking at.

Rich Williams: They won't disappoint you.

[Laughter]

- Mike Liguori: It's the only thing left.
- Chairman McNulty: You could hold onto that.
- Joe Zarecki: Thank you.
- Mr. Marvin: Okay, so if it's okay, I'll have Mike talk about the improvements that he's made to the entrance. Unless you don't have any questions on it. I mean...
- Chairman McNulty: No, did you have anything else you wanted to say.
- Mr. Marvin: No, that's all I had. Unless you have some questions for me.
- Board Member Taylor: Well, do you want to make a comment on the trees?
- Ted Kozlowski: Is now the time.
- Board Member Taylor: On those two trees.
- Ted Kozlowski: Okay, can I get up?
- Chairman McNulty: Yup.
- Rich Williams: Oh, now he's standing up.
- Ted Kozlowski: I'm going to stand up. First of all I'd like to thank you for entertaining that idea of keeping the ridgeline and moving that down in my mind as my role in the Town I appreciate that effort. This is...I was the one that identified the trees out there.
- Mr. Marvin: Oh, you did? Okay.
- Ted Kozlowski: Yeah. This is a nice upland oak forest. They would normally call that an upland central hardwood. What is really nice about this, it's very, very little invasive plant interaction in there. In other words, it's mostly native plants. It's mostly oaks and they're mature: they're very tall. So, if they keep the integrity of this forest here, that is going to serve quite well as a buffer between the tops of these buildings and the view shed. So I think it's really critical and important that you try to preserve this as much as you can, which you're attempting to do there. Now, the trees...These two trees which happen to be the biggest of the eight, will not survive as shown. Alright, and I've been doing this for thirty-six...
- Mr. Marvin: I'm not a tree expert. I've...
- Ted Kozlowski: I've been doing this for 36 years. Rich is part of that. He's got almost equal experience in that field and it's just the most important part of these trees is the root zones and they're going to be terribly impacted by the change in grades. The severing of roots. The change in hydrology in the soils. However, you were imaginative, Joe, in the way you pushed this whole like of buildings off the ridge and I have several questions. One is that these units are in numbers of six. Are you married to that? Is that something that has to be?
- Joe Zarecki: No. Like I said, once we get through this part of it and we go into design...

Ted Kozlowski: Okay.

Joe Zarecki: and make additional efforts to take some of the side units, we may make...Instead, make that a five and put it...

Ted Kozlowski: Right.

Joe Zarecki: one other one.

Ted Kozlowski: Because I'm looking at this and I know you've got the setbacks, but if you clipped one of and put it someplace else or if you widened this spaces for the tree roots, especially on this one here, the red oak further to the north. This is the one that is better off than the white oak over here. But I think with a little imagination, a little more curve to the driveway and a little more separation between buildings, we might be able to accomplish that.

Joe Zarecki: I think...I agree with you. And we will...When we get to that point, we will definitely work with you.

Ted Kozlowski: I also think that if you do preserve those oaks, they're so big and so old, an aesthetic, that's going to add value to these units because you're not going to have anything left here and you're going to be starting within all new trees. These trees are up on the knolls. They're very large, they're very spread out and they're going to add, like I said, some aesthetics and value to these units. So it would be in your best interest, probably from an economic standpoint, to try to save these. The other thing is, I disagree with you a little bit it's not just the two, there's a third here, this red oak on the edge of Building 11. The change in grade is going to affect the root system of that, too. Alright. And don't just go with drip-line. That is no longer and accepted reality. It doesn't happen. The roots go beyond...way beyond the drip-line. So the rule of thumb is give it as much as you can. And I think you can squeeze these trees in with a little more imagination and a little more gaps between the buildings.

Joe Zarecki: Well noted.

Ted Kozlowski: Okay.

Chairman McNulty: Okay.

Ted Kozlowski: And thank you.

Mr. Marvin: Thank you. Mike, you want to address them on the...

Mike Hartman: Yeah, sure.

Mr. Marvin: traffic. On the intersection.

Mike Hartman: This is the same handout that I think you all...

Chairman McNulty: Yup.

Mike Hartman: received for your work session.

Chairman McNulty: Mmhhh.

Mike Hartman: So if you want more paper, you can have another copy. If not...

Chairman McNulty: No, I've got plenty of paper here.

Mike Hartman: I think instead of going through it page by page, I think relocating the driveway as shown here, moving it to the east...I'm sorry, the west. It improves sightlines looking east. It improves the sightline looking west. It minimizes the work necessary looking east. The utility poles are now not a factor. And the rock crop...Out rock crop is not a factor. A little bit of vegetation being removed would increase sight distance significantly. I think the big improvement is looking west. I think with one of the photos in here showed the old location. You could just see down to a mailbox that was somewhere in here. Now you can see 90 to 100 feet past that mailbox.

Chairman McNulty: Yeah, you can see over that knoll now.

Mike Hartman: So, and I think another thing it does is school buses stopped here are going to be much visible for motorists coming in this direction and of course in this direction. So, unless you have any...If you have any, you know...

Chairman McNulty: No, we didn't really...

Mike Hartman: specific questions.

Chairman McNulty: We did look at it at the work session. I think we're all in agreement it was a nice change. It opened up the view...

Mike Hartman: Mmhhh.

Chairman McNulty: which was the main concern.

Mike Hartman: Yup. And another thing it does...

Chairman McNulty: Looking east and west.

Mike Hartman: it allows this to be creative a little bit more aesthetically and a little bit more room for safety. So, you know, I think it's a win-win.

Chairman McNulty: Rich, did you have any comment on that entrance design, or...

Rich Williams: Well, I...The comment that I had to the Board was the center divider. I typically find them to be more of a nuisance than a benefit. But I, you know, do have one questions probably for Bob [Marvin]: Has there been any discussions with the HOA on this yet?

Mr. Marvin: No. Not from me. I don't think...

Rich Williams: Okay.

Mr. Marvin: I don't think anybody else has. But I did talk yesterday, not on this specific topic, but with...

- Chairman McNulty: Can you come up to the microphone, please?
- Mr. Marvin: Yeah. I had a conversation yesterday with a Mr. Coder who's with McGrath Management and they manage Fox Run.
- Rich Williams: Yes. Yes.
- Mr. Marvin: He's...It's a hired, you know, management company.
- Chairman McNulty: Kevin McGrath.
- Mr. Marvin: Yes. Yeah. And he expressed to me what he has already expressed to me a number of times over the last year and a half that he and the entire Board of Fox Run are 100% behind the project that we're trying to accomplish here. So, no I haven't spoken to him about this, but I'm confident that if that's what the Board wants and it's a better design that they'll be happy to go along with it. I have no doubt in my mind that they'll cooperate on that. They're really anxious to see us succeed and because they feel it's going to help them and it will.
- Rich Williams: Mmhmm.
- Chairman McNulty: Rich, just a comment on that divider. I kind of like the way they look. I know if they don't...they're not kept up, they beat up looking. Is there a safety standpoint that you're looking at? Or is there...
- Rich Williams: No. No...
- Chairman McNulty: maintenance?
- Rich Williams: not from a safety...I'm looking at it from a maintenance: both short-term and a long-term. You know, I know plowing snow that people that plow snow hate them.
- Mr. Marvin: Yeah.
- Rich Williams: They're always hitting the plows on them. They're always banging them up and then...
- Chairman McNulty: I guess...
- Rich Williams: you know, as you said they, you know, during the summer it's nice if you have this nice flower and vegetative aisle, but that requires somebody to actually maintain them. I know in the Town of Southeast, you know, their planning board had been, you know, looking at putting this things in all over town. Well, the Highway Superintendent hates them, won't touch them.
- Mike Liguori: Yeah.
- Rich Williams: So...
- Mike Liguori: And if they have (inaudible) curbs then he eats them.

- Chairman McNulty: Yeah.
- Ron Gainer: Yeah, you can't...
- Chairman McNulty: So there's no curb.
- Rich Williams: Yeah, so...
- Mr. Marvin: As far as that is concerned, I think if you want it, my client's prepared to do it.
- Chairman McNulty: Yup.
- Mr. Marvin: If you decide you'd rather not have it, you know, fine.
- Chairman McNulty: Yeah, it's an aesthetic point, basically, so...
- Mr. Marvin: Yeah. They do look good when they're maintained.
- Chairman McNulty: Yeah.
- Mr. Marvin: I understand...I know the snowplow guys hate them.
- Rich Williams: Hate them.
- Mr. Marvin: Because they whack into them.
- Chairman McNulty: The thing when you have that is just to make it...
- Mr. Marvin: You've got a foot of snow, you don't see it, and wham, you know.
- Chairman McNulty: is to make that driveway wider there so it gives it more room. It would help that. Again, that's an aesthetic point, so...Okay.
- Board Member Taylor: We have on other concern, which you know about. It's...You answered it to a large extent with the no residents below 19 [years old]. But we also have the concern about the number of people who are 55 and older who are still in the workforce and what impact that will have. Our concerns with the roads to the south, for example, focus primarily on people, additional commuters, being in the area. If they were retired we don't see it as a problem because they're going to be traveling at different times...
- Mr. Marvin: Right.
- Board Member Taylor: during the day. Have you done any studies about how you're going to market this? Are you going to appeal to people who are retired? This is going to be a retired community?
- Mr. Marvin: Well, I mean, it will be marketed as an over 55 community. So, you know, if you're 55 or 56 you're as eligible as if you're 85 or 86. I don't have statistics right now that tell me, you know, what the age spread in the community is likely to be. But I have provided to this Board in the past,

this was back at the time that we were talking about changing the zoning to...I forget what it's called now. You know, the...

Chairman McNulty: The overlay.

Board Member Taylor: Active adult.

Mr. Marvin: Active adult, or whatever it's called, I did submit statistics to the Board that were...I believe I got them from the National Home Builders Association based on many studies that they had done on over 55 communities throughout the country. And those studies, one of the pieces of data, and I can go back and get my hands on it in time for the next meeting, but you have it somewhere in your files, there was data about how on sort of a per...say per 100 units or per some number of units, how many extra trips are generated at peak hours. And again, I can't tell you chapter and verse what those numbers are, but the peak hour additional flows from these types of communities are very minimal. You know, and we were talking about, you know, the kind of numbers that...Mike, do you have numbers on that? You may.

Mike Hartman: On...

Mr. Marvin: That are more specific to this particular...

Mike Hartman: On the generated trip? Sure.

Board Member Taylor: Yeah.

Mr. Marvin: Yeah.

Board Member Taylor: Well, we have those numbers. This is a much more general question than just traffic. If...There are other impacts besides traffic. So, I wanted to explore whether you've done any research on that or whether you have...Are you doing anything in this community to attract older residents?

Mr. Marvin: Well, not at this point because, you know, we're not going to spend money marketing something when we're not, you know, at a stage where we're ready to market yet. But I don't think there's any idea of excluding anybody that's over 55. I mean...

Board Member Taylor: No, I understand that. But you could do things that would attend to attract people over 55...

Mr. Marvin: Well...

Board Member Taylor: and get them to stay on...Let me finish.

Mr. Marvin: Mmhmm.

Board Member Taylor: Get them to stay longer. Some ADA things. Some changes in the way kitchens are laid out and so on...

Mr. Marvin: Mmhmm.

Board Member Taylor: to make them...So people will move in and want to stay until they're 85 or something.

- Mr. Marvin: Yeah.
- Board Member Taylor: Has there been any thought along that line?
- Mr. Marvin: I'm going to turn that one over to Joe because I think that really is the design of the particular units and I don't really know what that is.
- Board Member Taylor: Right.
- Mr. Marvin: Joe, do you...Have the (inaudible) far on that?
- Joe Zarecki: I'm not 100%. Curt, like I said, Curt was working on it. But I think he was keeping them on a lower level. I think it was...I don't know if it shows something with floor layouts what he had there.
- Board Member Taylor: All we've seen is that they're 2-story units.
- Chairman McNulty: Yeah, I haven't seen any...
- Joe Zarecki: Alright.
- Board Member Taylor: We've seen nothing like that.
- Chairman McNulty: So you've done some interior layout.
- Joe Zarecki: We've just...To try to get an idea of how many square foot and how the buildings would lay out there.
- Board Member Taylor: Well, so the question is are you amenable to doing some design...
- Joe Zarecki: Absolutely.
- Board Member for targeting an older population? That's what we're looking for: something that would mitigate any of the potential impacts.
- Joe Zarecki: Well, in the basic layout, I believe the units are for the purpose of 55 and older. We don't want to make it difficult for somebody that's going to be my age.
- Board Member Taylor: Right.
- Joe Zarecki: going in and up and down the stairs with bad arthritis, I'm sure there'll be units available that will have specific goals for that.
- Mr. Marvin: Right. And I think I'm comfortable saying that that will be the case. I didn't quite understand your question initially, I do now. And I know that my client wants these things to be saleable and so, you know, I think that it's almost as a practical necessity that they be designed so that older people will buy them and be able to move around in them and get in and out of them.
- Chairman McNulty: I think what Ron was looking at is it going to be targeted from true retirees.

Mike Liguori: Ground floor master bedrooms, things like that.

Chairman McNulty: Yeah.

Mike Liguori: I think that's...

Chairman McNulty: But I understand it's 55 and older.

Mr. Marvin: Yeah.

Chairman McNulty: So that's going to be your target group.

Mr. Marvin: Right. I mean, you know, most of the people are probably going to be retired. Not necessarily all of them but I think, you know...Again, as a practical necessity, I think that they will...They're not completely designed at this point, but as Joe said...

Joe Zarecki: It's (inaudible – too distant).

Mr. Marvin: can't see why they wouldn't.

Chairman McNulty: Yeah.

Mr. Marvin: I mean, you know, nobody's going to buy them if there's lots of stairs and, you know...

Board Member Taylor: Well...

Mr. Marvin: tight turning radiuses from inside and out...

Joe Zarecki: front (inaudible – too many talking) going out.

Mr. Marvin: You know, wheelchair or some kind of...Somebody that's got handicapped...

Board Member Taylor: Right. That's exactly what we want to hear.

Mr. Marvin: Yeah.

Board Member Taylor: Because our concern is that if they're not designed properly, you're going to have people moving in who are 55 and 56 who are still working and commuting and doing all those things because the older people don't want to live in them. We would like to see that it be a retired community.

Mr. Marvin: It wouldn't...I don't think we'd want to sole limit our market. So that it would be necessary for us to...

Board Member Taylor: Right.

Mr. Marvin: design them in such a way so that somebody who's truly more old than 55...I'm 57 so, you know, I'm getting there.

Board Member Taylor: Okay.

Mr. Marvin: But...

Board Member Taylor: Well, Joe's more appropriate, I think.

[Laughter].

Mr. Marvin: But...So I think to answer your question, yes. They'll be designed so that older people will be comfortable in them.

Board Member Taylor: Okay.

Chairman McNulty: Okay.

Board Member Taylor: That's what we want to know. Thank you.

Chairman McNulty: Alright. Now Rich has prepared an outline on the EAF here of the items we flagged and he's given us a pretty good road map of what we're looking for through the site plan development and the items we'll be looking at mitigated and looked at very closely. I ran through it quick last night. It looked pretty good to me. I know Ron, you just got this tonight.

Board Member Taylor: I just got it today. I read the original one so I would have to look...I thought it was good, too. The one...the comment...I thought it needed to be reworded as...since we're doing a conditional.

Rich Williams: We are not doing a conditional.

Board Member Taylor: We've decided not to do a conditional?

Rich Williams: You can only...I went back and took a look at it. You can do a conditional negative declaration if it is an unlisted action, not if it is a Type 1 action. This is a...

Board Member Taylor: Type 1.

Rich Williams: is a Type 1 action.

Board Member Taylor: Okay. Alright.

Rich Williams: So we are not doing a conditional.

Chairman McNulty: So there is no way to incorporate this EAF comments into a determination?

Rich Williams: Well, you always have to remember that you're making a negative determination based on the representations made in the Environmental Assessment Form and the Applicant...if...You know, and the ones made by the Applicant. If that changes as we go through the process, we can rescind the negative declaration at any point and go to a positive declaration.

Board Member Taylor: Alright, then I'll look at it in terms of...that we're very clear about what we're concerned with so that you know what our concerns are and we expect the concerns to be adequately addressed in the course of the...

Ron Gainer: By the end product of what Rich is trying to provide is to identify that necessary...

Board Member Taylor: Yeah.

Ron Gainer: mitigation...

Chairman McNulty: Yeah, this...

Ron Gainer: to allow you to make...

Board Member Taylor: Right.

Ron Gainer: the negative declaration. To make that attempt...

Chairman McNulty: This basically is a roadmap for us to follow...

Ron Gainer: Yeah, he's given you a lot of things...

Chairman McNulty: along with all the other items.

Ron Gainer: to respond to. So, probably the Board can understand it and move it forward.

Rich Williams: Yup.

Board Member Taylor: Well, I'm sure the Board can understand it. It's whether the Board agrees with it or not.

Ron Gainer: Oh, no. That's exactly it.  
[Laughter].

Rich Williams: Always the case.

Ron Gainer: You're making up...

Chairman McNulty: On the Part 3, Rich, we have make an official acceptance of this...

Board Member Taylor: Yes.

Chairman McNulty: into the record.

Rich Williams: Well, what this is Part 3: There's three parts to the environmental assessment form. Essentially, you're going to accept the environmental assessment form and if you look at the last page on this...

Board Member Taylor: You have to sign off.

Rich Williams: it's right out of the DEC pdf...

Chairman McNulty: But this has be done before determinations.

Board Member Taylor: No, this is as the determination.

Rich Williams: This is your determination.

Chairman McNulty: It is? Okay.

Board Member Taylor: This is it.

Chairman McNulty: Okay. Well Rich, I just got the new copy. So I don't know if everybody...Has everybody else had a chance to look at this yet?

Rich Williams: Well, let's be...

Chairman McNulty: I'm not ready to...

Rich Williams: let's be clear about the new copy. I sent you the meat last night. I sent you the text and the responses so you could start taking a look at them for today's meeting. And then I just reformatted. What I did is I incorporated elements of the DEC form into this.

Chairman McNulty: Okay.

Rich Williams: So, the responses are all the same. I haven't changed any of the language.

Chairman McNulty: Okay, I want to take a closer look at it myself, see...

Rich Williams: Alright, nobody has a problem with me sharing it with the Applicant.

Chairman McNulty: No.

Board Member Taylor: No. Still a draft doc[ument]? No.

Chairman McNulty: Not at all.

Board Member Taylor: I mean, we've been sharing all along, right? So, that's the whole point of this.

Chairman McNulty: That's fine.

Board Member Taylor: The other thing I think we need to talk about, whether we want some kind of public comment before we do a SEQRA determination. SEQRA recommends it. We've talked about it before and that there's no real mechanism but I don't think that should detour us from seeking some outside comment. I mean, it...Sometimes it's helpful. Like tonight, we had a particular question come up that stumped us a little bit.

Chairman McNulty: Yeah. Did we ever send out notice like we talked about a couple of times to let the people know in the area?

Rich Williams: We sent out notice originally. I don't know if we've sent out anything recently, but...

Chairman McNulty: But there was an initial...

Rich Williams: Yeah, there was.

Chairman McNulty: letter sent out that there was...

Rich Williams: We've had the homeowner's association in and the, you know, the HOA has been meeting with the Applicant.

Chairman McNulty: Yeah, there's not too...The houses are pretty sparse up around there. And we did...If we did send an initial, I would be satisfied with that. No public comment has come into the office? Or written comment?

Rich Williams: We had one of the board members in here, you know, that one meeting.

Chairman McNulty: Yeah.

Rich Williams: That's it.

Chairman McNulty: I would be okay with that. Are you comfortable?

Board Member Taylor: No, but I'll go along with the rest of the Board.

Chairman McNulty: Okay.

Board Member Taylor: Depends on how you...Let's take a vote on it and decide what we're going to do. Are we going to do more of a public information or not?

Chairman McNulty: Well, I feel that we've sent out a notice. The Homeowner's Association's aware of it. I'm comfortable with that. We will have a public hearing further down the line.

Board Member Brady: I agree. I agree with that.

Chairman McNulty: Yeah.

Board Member Taylor: Alright, so that's it.

Ron Gainer: Your agendas, your agenda are posted, right?

Rich Williams: Oh yeah.

Ron Gainer: Yeah.

Chairman McNulty: So...

Board Member Brady: I do have a question for Ron. In your memo today...

Ron Gainer: Yup.

Board Member Brady: Not sure exactly...I don't remember exactly how it was worded but in the treatment plant there's, I guess, two passes it sounded like.

Ron Gainer: Right. There's two...

Board Member Brady: and one's being used and the other one's not.

Ron Gainer: two treatment trains involved in that...

Board Member Brady: Okay.

Ron Gainer: overall plant.

Board Member Brady: So one has to be checked out and tested and one...

Ron Gainer: Right. One has been in routine use. The second one after startup has never been used. System operator has merely recommended that the manufacturer of the process units just come in and...

Board Member Brady: Make sure everything looks...

Ron Gainer: verify all units are operated proper. Which is a...

Rich Williams: I was very surprised to hear because you don't do that.

Ron Gainer: You don't do what?

Rich Williams: I mean, with our treatment plant over here, with every treatment plant, everything is designed with redundancy. Everything is designed so that you have two paths...

Board Member Brady: Right.

Rich Williams: so if one path isn't working but then when you're running the plant, you're alternating....

Ron Gainer: (Inaudible – too many talking) you alternate...

Board Member Brady: Right. That's what I would think that you were...

Rich Williams: Yeah, so...

Ron Gainer: I got the understanding from the operator that that's not been done which surprised me.

Rich Williams: Yeah.

Board Member Brady: Yeah.

Ron Gainer: But that's the reason, I...

Board Member Brady: Because when you need it, it's not going to run.

Rich Williams: Right.

Ron Gainer: He just wanted to be assured that everything was copasetic.

Board Member Brady: Yeah, well I think that's very important.

Ron Gainer: And it's not a significant effort to do.

Board Member Brady: Right.

Ron Gainer: It's just bring the operator...or the manufacturer in for a few days. So it would be a new kind of start-up for just half the process strength which you could deal with down the road.

Board Member Brady: Okay.

Ron Gainer: You don't have to do it now.

Board Member Brady: I just, you know, I saw it in there and I just...

Ron Gainer: Right.

Board Member Brady: I was a little surprised.

Ron Gainer: It's important to understand, that's all. It's an operation which...I agree with you.

Board Member Taylor: It looks like we pretty much resolved everything. It's just a matter of getting the language down and then moving forward.

Rich Williams: Well I know how you did.

Ron Gainer: Yeah, okay. Sorry.

Chairman McNulty: Ron, we talked earlier about how some of the language was (inaudible – too many conversations going on) ...You'll make a comment?

Board Member Taylor: Yeah. Yeah, I'll go through it in detail. I mean, I can't deal with things the day of the meeting. I'm responsible, too. I sent out emails the day of the meeting, too. But especially with the snow and everything. It's just...

Chairman McNulty: Okay, does anybody have any other comment tonight on Fox Run. Bob, you're quiet down there.

Board Member Ladau: No. Yup.

Chairman McNulty: Okay.

Board Member Brady: That's not a good thing.

Chairman McNulty: Mr. Marvin and Joe any comment?

Mr. Marvin: I just...It sounds as if you're...The Board is close to making a SEQRA determination. Is it fair to expect that maybe at the March meeting you would be in a position to do that?

Chairman McNulty: Yeah, I think we're getting close. We could work through the work session on these final notes and nail this down so we can have it worded...

Mr. Marvin: Right. Okay.

Chairman McNulty: I think we're getting close.

Mr. Marvin: So Rich, if you do want to share that with us we'll, you know, give our two cents and maybe help the process move along. Thank you all.

Board Member Brady: Thank you.

Board Member Taylor: And you will send us a note that this is mislabeled; the cross-section.

Joe Zarecki: We'll send you a new copy.

Board Member Taylor: Okay, well you don't need a new copy. Just tell us, in fact, that it is 11 instead of 12 [referring to the building numbers]. No point in wasting paper.

Ron Gainer: You want to also make that commitment about the no one under 19.

Chairman McNulty: Yeah. Can you use the microphone?

Mr. Marvin: Sure. I could put a letter to the Board or however you want to do that.

Ron Gainer: That's a significant issue.

Chairman McNulty: Say that again, Ron.

Ron Gainer: I'm saying that's a significant issue to see that that's put in the record beyond just the verbal comments tonight.

Board Member Brady: The age.

Chairman McNulty: Yeah.

Board Member Brady: Okay.

Mr. Marvin: I can send a letter to the Board, you know.

Chairman McNulty: Sure.

Mr. Marvin: Sure.

Chairman McNulty: Okay.

Mr. Marvin: Okay. I'll get that out either later this week or...Probably not. It's only one day left. Sometime next week.

Chairman McNulty: Alright.

Joe Zarecki: So other than that, no further data is needed from us till the next meeting...for the next meeting, correct? Because I want to make sure I don't miss anything.

Board Member Taylor: I don't think we need anything.

Rich Williams: Oh, no. You know, I do want to mention one thing. One of the outstanding issues I just...Sorry. Flash. Was whether there was adequate capacity within the NYSEG grid for the project.

Chairman McNulty: Still no response from NYSEG?

Rich Williams: Well, no, no, no. They've got a verbal back: NYSEG is reluctant to put anything in writing but they...

Chairman McNulty: Poor, Sarah [referring to the fact the microphone was not being used].

Rich Williams: They've got a verbal back that there's adequate capacity within the grid coming in off of Mooney Hill [Road].

Chairman McNulty: Okay, good.

Rich Williams: So, that's been resolved.

Mike Liguori: That will be written in Espanol.  
[Laughter]

Chairman McNulty: Just Joe, if there's any...If you look at that design and address Ted's comments with the trees. If you think there's a building that might have 5 units instead of 6 units. I'm not saying redraft, but maybe make some notes; forward them to us.

Joe Zarecki: Okay.

Chairman McNulty: We can look at it.

Ted Kozlowski: You can do it, Joe.  
[Laughter].

Ron Gainer: You can do it.

Joe Zarecki: The old oak tree.

Ron Gainer: Alright.

Chairman McNulty: Okay.

Joe Zarecki: Get John Wayne.

Chairman McNulty: Alright, thank you.

Joe Zarecki: Thank you very much.

Chairman McNulty: You're welcome.

Board Member Brady: See what I'm saying, it's easier on paper. It's a lot easier to build.

Chairman McNulty: A lot of paper and that's why I wasn't sure.

#### **4) OTHER BUSINESS**

##### **a) Zoning Code – Restaurants**

Chairman McNulty: Okay, that brings us to other business. And we have a zoning code for restaurants that we've been looking at. Rich drafted up some more notes. Okay, Ed you weren't here the other night.

Board Member Brady: No.

Chairman McNulty: Have you had a chance to look at this?

Board Member Brady: I just saw it tonight. A lot of it makes sense though.

Chairman McNulty: One question I had in the notes here for the change, the 154-77, it addresses...want to bring in business hours to address and one of the things I thought about long term is if do we have to have established business hours for different types of businesses to determine this? Or is it on a case by case basis?

Rich Williams: Well, I would say it's on a case by case basis.

Chairman McNulty: So, you could have multiple restaurants but depending on the type of service...

Mike Liguori: I think...

Chairman McNulty: we could limit their hours? I'm just looking down the road to take the grey area out.

Mike Liguori: What we could take about is I guess really two things: One is, is that your analysis is going to vary depending on where these restaurants are. So for instance, if you're on [Route] 22, you know, Abruzzi is a perfect example. Who cares if it's open at three in the morning, there's no residences around. But if it was in Put Lake, you know, next to a residential district, your scrutiny level is going to increase pretty significantly.

Rich Williams: Mhmm.

Chairman McNulty: And we're within our right to limit hours of a business and not bring on a legal challenge?

Mike Liguori: Well, you know, in your determination, you know, when you go through the SEQRA process or, you know, let's say a change in use and you analyze the impact of the operation of the business on, you know, not just the environment but on the community, that's where you're going to have that leeway. We're going to have to be, you know, pretty detailed about the findings we make in that regard. So, you know, if an applicant comes in and says Abruzzi's open till three in the morning why can't I be open till three in the morning? We're going to have to say, well, you know, the restaurants that are up on 22 don't have residences within 20' of the back yard property line. So, that noise from somebody standing outside of a restaurant maybe and smoking a cigarette or, you know...I used to have this all the time in the Village of Cold Spring. There's this corner restaurant/bar called Whistling Willie's...

[Laughter].

Mike Liguori: who would...

Ron Gainer: I like Whistling Willie's.

Board Member Brady: Me, too.

Mike Liguori: Yeah. It's a great place. Well, the neighbors are literally right next door and there are a lot of complaints about people going outside to smoke and talking at 11 at night and 12 at night or 1 o'clock in the morning and that's where you start...This isn't a village obviously, but when you get into the Put Lake area you get, you know, pretty close in character to a village.

Board Member Brady: Right.

Mike Liguori: So...

Board Member Ladau: Should there be some language then in the revised Code that talks about interference with quiet and peaceful...Excuse me. Quiet and peaceful possession of the adjacent residential properties? Or adjacent properties period?

Mike Liguori: I would leave that to SEQRA. What we might want to look at is...Here's the problem: When you're writing code, right, we don't want to put more language in that gives...that has discretion. That doesn't have definition. So we have to be...We either need to be so precise in what the

hours, you know, would be and maybe even designate them. I don't know if you want to go down that road and be...

Board Member Ladau: No.

Mike Liguori: exceptionally...

Board Member Ladau: No, you wouldn't want to designate them for the very reasons that you stated that...

Mike Liguori: But I think...

Board Member Ladau: Abruzzi has a different effect on surrounding property then something...then McKinney and Doyle in the middle of Pawling.

Mike Liguori: What you're talking about, that analysis is already there under SEQRA. We can, I mean, we can talk about it if you want to...

Rich Williams: We could talk about it but I generally agree with you that, you know, you don't want to limit a business's ability to be open if it's reasonable for them to be open.

Board Member Ladau: Okay, what constitutes...

Rich Williams: By limiting their...

Board Member Ladau: reasonableness?

Rich Williams: Well, that's an evaluation that needs to be done by the Planning Board, generally, through the SEQRA process is whether it's reasonable given the potential impacts and those that are going to be most impacted, you know. Again...

Mike Liguori: You know what we could do is...

Chairman McNulty: My thought was do we...This code that's being rewritten is a general code for conditions for which approved...approval's required and if we targeted restaurants and fast-food restaurants and define them better or give them more definition.

Rich Williams: Well, there's been some talk about re, you know, putting in definitions of catering and some other things with the restaurants which really hasn't been addressed yet at this point. But...

Chairman McNulty: But should that be our recommendation? Should it be included to our recommendation to the Town Board? Would it be a good time no to incorporate this and...

Rich Williams: Again, with that memo that I did, I did a whole laundry list of what constitutes a restaurant and what doesn't.

Chairman McNulty: Mhmm.

Rich Williams: And, you know, everybody has the opportunity to take a look at those or, you know...

Mike Liguori: Why don't...

Rich Williams: for their own research.

Mike Liguori: Why don't the... We could probably sit down and say in connection with the review of 154-77 (B) the Planning Board shall analyze the following factors. We could do that probably which may address the concern of the Board.

Chairman McNulty: Mike, our big concern here is to create that trigger. So...

Mike Liguori: Well, the trigger's...

Chairman McNulty: if we have one restaurant to another restaurant, generally it's not... We don't look at it as a change in use, technically.

Mike Liguori: No, I know that.

Chairman McNulty: It has...

Rich Williams: No.

Mike Liguori: It's...

Rich Williams: But that's what we're trying to do.

Mike Liguori: That's what we're trying...

Chairman McNulty: That's what we're trying to do.

Mike Liguori: Yeah.

Rich Williams: We're setting up a set of triggers so that if something comes in and it's a significant change in hours of operation or, you know...

Chairman McNulty: That's why I'm looking at the restaurants...

Rich Williams: the type of menu or...

Chairman McNulty: I feel if we make this too broad, now we're beyond restaurants and...

Rich Williams: But that's where we want to be as well.

Chairman McNulty: we're missing something.

Rich Williams: I mean, we...

Chairman McNulty: We do, but...

Rich Williams: It's not just restaurants.

Board Member Brady: No, because the place in Put Lake is more of a catering thing than anything. So, it wouldn't even...

Rich Williams: But I'm saying if you had just not a restaurant there but a retail store, you know, that was opened from, you know, 9 to 3: Closed at 3 o'clock every day for 20 years and all of the sudden you had somebody that wanted to run a 24 hour convenient store...

Board Member Brady: Right.

Rich Williams: It's a significant impact.

Board Member Brady: Right. Absolutely.

Rich Williams: So, you still need that same trigger whether it's a restaurant or it's a retail area.

Chairman McNulty: I understand. I just don't want to make it to the point where we get stuck in a grey area down the line somewhere, again.

Mike Liguori: Yeah, you know, we can...Rich and I can certainly take a look. Like, you know, we might define substantial as, you know, more than two hours in any direction. You know what I'm saying?

Rich Williams: You mean to...

Mike Liguori: Any substantial change in the hours of operation. We could say, you know, longer than 2 hours to the prior business. We could do that. It's difficult when you're crafting these things because you're assuming that you know...

Chairman McNulty: Oh, I see that.

Mike Liguori: what the last business did, you know.

Board Member Brady: Right. And were their hours of operation from 8 [a.m.] to 8 [p.m.]...

Mike Liguori: Right.

Board Member Brady: but they were cooking for four more hours after that and that's not their hours of operation. That's a...

Rich Williams: And you want to build flexibility into your Code but...

Board Member Brady: Right. Yeah.

Rich Williams: not too much flexibility.

Mike Liguori: Right, right.

Chairman McNulty: Ted, you want to say something.

Ted Kozlowski: That's a question and Ed kind of brought that up. At the last meeting Dede, the resident behind us, it wasn't really the noise factor. It was a visual factor. It was a smell factor. And the question I had, and I didn't read any of the proposed new law, but hours of operation: if a business is smoking barbeque for 24 hours, is that 24 hours of business of operation.

Board Member Taylor: Yes.

Chairman McNulty: Yeah. I would say so.

Ted Kozlowski: So if they are to be between the hours of say 12 noon and 8, 9, 10 o'clock at night, then that's when it should end, I would think.

Board Member Taylor: Well, that's covered.

Ted Kozlowski: Okay.

Board Member Taylor: Yeah, since you haven't read them, it is covered in this.

Chairman McNulty: Yeah.

Board Member Taylor: I think I agree with you, Tom, but I also see the need to make this broader because it's not just hours. It's not just noise. Sometimes it's odor. Sometimes it's, you know, these other things. And I don't think that puts us in a grey area. I mean, we're always in this situation where we have to weigh certain things: How close are they to the wetlands? I mean, the whole East Branch Road. All that we're trying to weigh how to deal with that.

Mike Liguori: In my mind, the...

Chairman McNulty: See...

Mike Liguori: the only way to completely eliminate any discretionary calls is to just say we're adopting a bright line rule that says if you change your business, if you change your name, you're coming back in for Planning Board approval.

Chairman McNulty: Yeah, we don't want to be an overburden.

Board Member Taylor: Yeah.

Chairman McNulty: It's just that I thought the definition's similar to what we did with research and development...

Mike Liguori: Mmhmm.

Chairman McNulty: as it's defined: We updated and amended it. We could still change this code to create the trigger. I just thought maybe to update the definition of restaurants, being that's what we're dealing with right now to maybe be a little more defined and include the catering if possible.

Rich Williams: Yeah. I just also want to point out that the site plan review process is not intended to have a lot of discretion in it. Correct me if I'm wrong, I mean, it's supposed to be closer to a black and white review for the Planning Board. If you've got an action that you want to consider, that you want to build discretion into it, you create it as a special use permit or something similar to that.

Mike Liguori: Right, right.

Rich Williams: Where, you know, you have that additional discretionary authority.

Chairman McNulty: Okay.

Rich Williams: So...

Mike Liguori: Yeah, it should almost be like a...When you look at the...You kind of look at Terry Rice's commentaries in McKinney's forward...

Rich Williams: Yeah.

Mike Liguori: Alright, so...

Chairman McNulty: Ron...Rich. [Referring to the microphone].

Mike Liguori: There's a fellow by the name of Terry Rice, and Terry Rice is an attorney who has written the forward to the section of Town Law that deals with zoning and planning. So when I go before the Zoning Board of Appeals and I have a variance and there are questions on the factors, you know, I look at that forward which is essentially the legislative intent; this is what the legislature intended to do and then this guy does, or people in his office, they track cases as they develop across New York State and say this is how substantiality has been interrupted by the court in the First Department which is, you know, the five Burroughs and...

Rich Williams: Parts of Long Island.

Mike Liguori: parts of Long Island. And this is how the Second Department does it and the Third and the Fourth. But when you look at his comments on site plan approval they're pretty interesting, particularly before SEQRA came about. And this guy's been doing this for a really long time.

Rich Williams: He's old.

Mike Liguori: And, you know, at the beginning it was really like making an application for a building permit but only to the planning board. Here are all the criteria for site plan approval. This is what you show on your map if your use is permitted and you show all that criteria on your site plan, then you, the Planning Board, would be hard pressed to deny somebody that site plan approval because they're met, you know, all the relevant criteria. So, then you go to SEQRA; all that good stuff comes along and now you have some serious discretion because you're analyzing these factors, you know, against the environment. And then fast forward to today. There's, you know, code drafting has become, you know, very...It's developed significantly from when we saw our first zoning codes in towns or even... You know, there's a lot of municipalities that have a zoning code that's from 20 years ago, 30 years ago. It still hasn't changed. But...

Chairman McNulty: So you're saying it's evolved with SEQRA?

Mike Liguori: Yeah. It's evolved because every single municipality has evolved and, you know, there's quite a few... You get to western New York maybe, you know, you get up to the Catskills there's still some towns that don't have a zoning code. You see the signs, you know, the towns that zoning codes in effect.

Chairman McNulty: Yeah.

Mike Liguori: You'd be surprised that in 2015 you'd see that sign.

Chairman McNulty: Yeah.

Mike Liguori: You just assume it's there. But anyway, we're a little off the point. I think if we can...

Chairman McNulty: So you're going to craft something, work with Rich, and...

Mike Liguori: Yeah.

Chairman McNulty: tune it up?

Mike Liguori: Well look, Rich... The triggers are in the language.

Chairman McNulty: Mmhmm. I agree.

Mike Liguori: They're there. You know, I think the questions are, are that once the trigger is there, you know, what do you look... what are you evaluating. And that's the point that you raised is well, how do we evaluate... Once the trigger is there, how do we evaluate something in the Lake different than something up on [Route] 22?

Chairman McNulty: Yeah.

Board Member Brady: Right. And I wouldn't want to see where you put in like restaurants and catering halls and, you know, you're basically limiting it...

Rich Williams: And... And...

Board Member Brady: to that.

Rich Williams: you know, what I...

Board Member Brady: I'd rather see it like it is where it's...

Rich Williams: Sure.

Board Member Brady: broad, because we don't know what the next barbeque joint's going to be. It could be, you know, McDonald's could start making barbeque, you know...

Mike Liguori: Well, this is...

Board Member Brady: and then you've got that problem.

Mike Liguori: but this is the right section of the code where that contemplates that. This section of the code is not just for restaurants. This is for...

Chairman McNulty: This is for all...

Mike Liguori: conditions for which...

Board Member Brady: No, I understand that. I wouldn't want to see this change where it was put, you know, being restaurants and catering. Just...

Chairman McNulty: No, I was saying...

Mike Liguori: Right. Right.

Chairman McNulty: the definitions within our Code for restaurants and fast food, to maybe define those a little different.

Board Member Brady: Oh, okay.

Rich Williams: But this isn't...Let's be clear here, this...

Chairman McNulty: This is not...

Rich Williams: trigger is not for the Planning Board. This trigger...

Mike Liguori: Is for the Building Inspector.

Rich Williams: Yeah.

Mike Liguori: That's right.

Rich Williams: To get him to get things over to the Planning Board...

Mike Liguori: Right.

Rich Williams: Where you have a little bit of discretion to evaluate what the impacts might be.

Mike Liguori: Right.

Chairman McNulty: Okay.

Rich Williams: Building Department doesn't ever do SEQRA. They don't...

Mike Liguori: Right.

Rich Williams: do that.

- Chairman McNulty: Oh, I understand that. I understand what's trying to be done here. It hasn't worked great in the past, that's why...
- Rich Williams: It's great in the past, it depends on who's doing the evaluation.
- Ron Gainer: Who's sitting in the chair, right.
- Chairman McNulty: Yeah. Okay. Alright, Dede, would you like to make a comment?
- Dede Lifgren: Just a question. So...
- Chairman McNulty: Come up to the microphone, please.
- Dede Lifgren: I'm sorry. Dede Lifgren. So the trigger then is from the Building Department. This is...
- Rich Williams: From the Building or the Planning Department. You know...
- Dede Lifgren: Okay, but...
- Rich Williams: somebody comes in. They want to do something different with the business. So, we take a look at what they want to do with that business and evaluate if there's a significant difference from what was done there in the past and whether it's, you know, appropriate.
- Dede Lifgren: Okay. Just from the experience that I have, I'm relating what might be an issue here. When they first came in, they said they were doing a barbeque and there was no mention of how the process of barbeque was going to be done. And so in that term...
- Rich Williams: I...Just...
- Dede Lifgren: From my understanding. From that term, nothing would have been triggered even with that definition if they didn't know the process. If it's not in...further into the Code...For example: If a retail establishment was put in the exact same spot, in the Code it says that it prohibits processes that are offensive, obnoxious, detrimental to the neighborhood by reason of vibration, dust, smoke, fumes, noise, odor or obnoxious waste. So, I mean, that clearly states that if there is...If it hits a limit that that's in the Code and this is sort of more on the discretion, if I'm hearing this correctly, of the Building Department.
- Mike Liguori: Well, now...
- Dede Lifgren: Is it...
- Mike Liguori: Now what we've...What Rich has drafted requires the building inspector to say, okay, you're coming into the Town. Now I need to know the following things: Is there a change in use in the building? Number one. So, let's say restaurant to restaurant. So, that's the first thing.
- Dede Lifgren: Right.
- Mike Liguori: Is there going to be a change in the site plan? Next is, is there any change in the type of business? Any substantial change in the hours of operation? So the building inspector has to

say, okay this is what I need to know. I need to know what type of business you're going to operate. Your hours of operation.

Dede Lifgren: Well, so far the hours are the only thing that would be triggered from...

Mike Liguori: Hold on. Hold on.

Dede Lifgren: Okay.

Mike Liguori: Change, any change, in the potential for emissions, odors or noise from the proposed business. So now we're putting the language in to tell the building inspector to say to the land owner, hey look. I need to analyze these particular things. Do you have the potential for emissions? I need to know what you're doing now.

Dede Lifgren: Okay. Alright.

Mike Liguori: And that was what...That was where the ship got missed the last time which was, you know, offensive odors because obviously no one knew the impact that this was...No one knew to look for the impact until it was too late.

Dede Lifgren: Okay, so that would also cover if...a substantial difference in a fan? Or additional fans were put in or larger fans were put in, would that be covered as well?

Mike Liguori: Well....

Dede Lifgren: Because we went from a small fan to an industrial fan...

Board Member Brady: Well, that would be noise. If there's noise...

Dede Lifgren: That would be covered. I mean, would a fan be...

Board Member Taylor: Yes.

Dede Lifgren: That would...

Ron Gainer: It would be noise or vibration, right.

Dede Lifgren: Okay, what if...

Board Member Taylor: Yeah. It's not the fan, it's the noise the fan produces...

Dede Lifgren: Right.

Board Member Taylor: that bothers you...

Chairman McNulty: Yeah.

Board Member Taylor: and which is what we're looking for.

Chairman McNulty: Now, with a noise issue, does it become a decibel limit? Does it...That's outlined in our Code, correct?

Rich Williams: It becomes anything that's a significant difference. But let me, you know, let me throw my two cents in on this. My opinion, there was enough meat on the Code, there was enough language in the Code which this could have...could have been picked up, you know, the last time. Where we always fall short is direction that is given to the Building Department and the amount of training that they have related to something other than looking at a building. You know, they don't get training. They do not get direction as far as, you know, interpreting zoning code, on how to look at the zoning code, and the importance of the comprehensive plan and the direction the Town is going to go. What's our vision? What do we need to be looking at? And so consistently in the past, we've had the Building Department not supporting the Planning Board, not supporting that vision within the Town.

Chairman McNulty: Mmhhh.

Rich Williams: And not really fulfilling the function of their position. That needs to change.

Chairman McNulty: Can another step in the building permit process be added where an application, not so much a plan, but just a permit application has to go through the Planner's Office or another checkpoint to just put another set of eyes on it and say, oh wait a minute?

Rich Williams: It can, but we want to make the process simpler. We don't want to make it more complicated.

Chairman McNulty: Oh, I agree.

Rich Williams: So what we need to do is we need to educate all of our officials. You know, in the past, in the early [19]90s, everybody was going through a lot of training around here. I mean, I'm so proficient in SEQRA because they actually brought Laura Ziesel in here for two different sessions, you know, full day sessions on the SEQRA to give us all the background. We don't do that anymore, you know.

Chairman McNulty: Why not?

Rich Williams: Because we just haven't. But we need to get back there.

Dede Lifgren: Could I ask one more question then in regards to that? Okay, so if it goes to the Planning Board as you suggest and somehow the change is not conveyed or maybe the owner doesn't realize that the fan is going to make, you know, a problem but it's all approved. Does the neighbor or the neighborhood have any way to then go to the Town and say, well there is a problem? Like right now, we're faced with the position that we don't have any...

Chairman McNulty: I have the same question. In other words, after the fact...

Dede Lifgren: Yes.

Chairman McNulty: that it gets approved, what in our Code then allowed the Town to take action? And that where I thought maybe a more defined...

Rich Williams: It's not even a...

Chairman McNulty: without trying to...

Rich Williams: It's not even our Code. It's a question of do we have the legal right to go back and...

Mike Liguori: Yeah, look, it's a tough call. It really is because, you know, there's no estoppel against the municipality. But if you have permits that are... That concept means that the municipality can go back and fix things that were done in error. The problem that you have is, is that when you start to look at the case law on this stuff, yeah you have the right to do it but it doesn't mean that you're not going to get clobbered. You can go back. I mean, there's a case up in Fishkill or in the Wappinger's area where there was a house that was... A building permit was issued for the construction of the house and it violated setbacks and ultimately the Town mandated that the house come down. But they didn't... that didn't happen without taking a beating in court. So, while you have that right, it's difficult.

Chairman McNulty: It's not easy.

Mike Liguori: It's not easy. So, you could do it. It really just depends on the appetite of the municipality. So...

Board Member Taylor: Well, isn't some of this though... anything we approve is conditional upon what they said they were going to do.

Mike Liguori: Well, I see...

Board Member Taylor: And if what they said they're going to do is different...

Chairman McNulty: No, building permit's different though.

Mike Liguori: Alright, look. Here's the problem with this particular case is that, you know, no one encountered a, you know, a barbeque smoke joint use and the impacts that go along with it, right? Now we all know. We know that the next barbeque joint that comes by everyone knows, hey this is something that we really need to analyze. We hadn't had that and it's unfortunate, you know, what's gone on but when... I don't think this guy came in and lied to anybody. That wasn't the case.

Board Member Taylor: Well, the question was in terms of noise. Nobody realized it was going to be noisy, but after the fact, the fact that it is noisy...

Dede Lifgren: Now.

Board Member Taylor: Something can be done about it, can't it?

Mike Liguori: Well...

Board Member Taylor: Because the original approval was based on the fact that it wasn't going to be noisy.

Rich Williams: If it violates the noise ordinance...

Mike Liguori: Right. That's...

Rich Williams: And we've got something to...

Board Member Taylor: Right.

Rich Williams: to go after...

Board Member Taylor: Okay.

Dede Lifgren: So there is an issue...

Rich Williams: But it doesn't. It's just a low, continuous hum which is...

Mike Liguori: Right.

Rich Williams: which is annoying.

Mike Liguori: Right.

Dede Lifgren: Twenty-four hours a day. So...

Mike Liguori: Yeah, it...

Rich Williams: I said continuous.

Dede Lifgren: There's no rest but...I know. It...

Mike Liguori: Look, you know...

Chairman McNulty: That's where the decibel issue comes in.

Mike Liguori: we've had this discussion a bunch of times. I mean, there's a cause of action and nuisance. And I know you guys don't want to go there. But it's not a Town cause of action, but if they're not...I looked at this with Bob McCarthy. I mean, we looked at the noise ordinance and it doesn't violate the noise ordinance so we can't go back and hook them on that. We looked at it.

Board Member Taylor: Okay.

Dede Lifgren: Well, that's an issue, too, because, you know, this is nonconforming and it's 70' from our home. And so, yeah, it doesn't hit the limit but, I mean, when does it not drive...

Mike Liguori: Dede...

Dede Lifgren: you crazy?

Mike Liguori: Dede, how many times are we going to go down this road?

Dede Lifgren: I know. I know. But the issue is, I think, and we're going into something beyond the Zoning Code, I'm sorry: but the issue is, is that there was no proper approvals and it was never

put into a commercial district. Lines were drawn and all the sudden it was incorporated into the commercial district when it never was. It never was approved for a commercial. I mean there was that...

Mike Liguori: It was a restaurant and it went to a restaurant. I mean...

Chairman McNulty: But the history of the property, I think Rich outlined, was...

Dede Lifgren: Was never approved for a commercial district and by...

Chairman McNulty: The zoning was...

Dede Lifgren: Right.

Chairman McNulty: somehow...

Dede Lifgren: And so all these mistakes...

Chairman McNulty: manipulated down the line.

Dede Lifgren: have come and now...Okay. Now we have no recourse. But, okay. I digress. I'm sorry.

Chairman McNulty: Okay. Well, I guess we'll let this go to the work session. You guys are going to take a look at it one more time and...before we make a referral to the Town Board.

Mike Liguori: Sure.

Chairman McNulty: Okay. We'll try and move this along and see if we can prevent future nuisance. Yes, Dede.

Dede Lifgren: Speaking of, I don't know if I'm speaking out of turn, but I have another issues that's sort of related to this. I don't know if...

Board Member Taylor: Well, we're under business for...

Dede Lifgren: But it's a new...It's a new...It's new business.

Chairman McNulty: Anybody else have anything to say about restaurants at this point. You can make your comment, Dede.

#### **b) Hair Salon –**

Dede Lifgren: Alright, well since we were talking about this and since it is, as we see it, an issue of many decisions that were made by the Town that we perhaps un-proper and now we are where we are and we have no recourse. So today, I'm here because I'm seeing this happen again because the property right next door to the barbeque place, which is also residential...which was residential when we moved in as well as the pizza place, is now selling and they want to open up a fulltime beauty salon there.

Now, we have problems with this because, again, it's in a residential zone and I went through the planning, the zoning, and all the files and there's so many inconsistencies. I'm afraid that all of these inconsistencies are going to come and haunt, like this other. Just to...Just for a few: The addition was put on the front of the building and renovation was already made for the beauty parlor before approvals were made. There are no building permits. Constant inconsistency about what zone the property was actually in. Variances were based on, I think, the wrong zone. There were...was a change in use in the residential zone. There was no public hearing. The site plan was waived even though truckloads of fill were brought in and the height of the property was raised 6'. This we know because it was plowed right to our property line.

Chairman McNulty: This is recently.

Dede Lifgren: No.

Rich Williams: No.

Dede Lifgren: This was all done when...

Chairman McNulty: oh.

Dede Lifgren: during the time. And so additional parking...

Ron Gainer: How old is this?

Rich Williams: Old.

Dede Lifgren: that was not approved. It was blacktopped, again, not approved in the side, in the back of the building. Guardrail that was supposed to delineate the parking area was placed at the back of the property so that there's parking over the septic tank and the fields and everything else. And so, anyway, the reason why I bring this all up is I'm afraid that these, again, are going to come back to haunt us. And the Health Department approved this based upon a submitted report that this seven hundred and some odd square foot bedroom had three...I mean house, had three bedrooms and they approved two stations for the beauty parlor to go in there. Six...Two chairs. Six chairs were put in and there's six chairs there now. There's more parking and I'm afraid that now the property is being sold. I've just contacted the real estate company that's advertising more chairs than what was being...what was approved for. So, I guess I'm coming to you...I don't know when it's going to come to you or if it's going to come, but I think...I'm putting up the flag that's not there that...What we're really concerned about is all of the sudden we have this exacerbated use in water. We have dyes, chemicals: We're fifty feet from that.

Chairman McNulty: Yup.

Dede Lifgren: downhill and our well is there.

Chairman McNulty: And it was a beauty parlor. So here we have our...

Rich Williams: Well, let's...Yeah. Let's back up.

Chairman McNulty: It could...

Rich Williams: I'll give you the background on it.

- Chairman McNulty: Okay.
- Rich Williams: Alright, so it was a residence. Back in the early [19]90s they went ahead and...
- Chairman McNulty: Oh, that recently?
- Rich Williams: Yes. And started converting the residence to use a portion of the house for a beauty parlor from the owner. They started bringing in fill. They started putting in a parking lot.
- Chairman McNulty: No site plan of any kind.
- Rich Williams: No site plan. So they were stopped. They were sent into the ZBA. They were sent into the Planning Board. They were sent in as being in the NS-1 Zoning District; they were not. But neither the ZBA nor the Planning Board had the ability at that point to...
- Chairman McNulty: Challenge it.
- Rich Williams: understand that they were not. You know, they were sent in as being in the NS-1 and they assumed that that was correct on good faith. So, the ZBA granted all sorts of variances for the addition, I believe, and then the Planning Board issued a site plan waiver to allow the use as a beauty parlor with the two chairs and, I think, it was three parking spots and a very specific layout. And of course then we sent it back to the Building Department to take care of that. Recently, an individual came into the office and indicated his wife was interested in buying the property and running it as it was with five chairs. And my response was, well it was approved for a beauty parlor even though I'm now aware of the fact that, you know, it is not a beauty parlor. They got the ZBA variances: I was aware of that. I was on the Planning Board at the time. I knew had done something with the site plan. I knew building permits were issued. So, I was concerned about the legality of telling him, no you're not going to go forward because it's not legal to be there. You know, I...My opinion is, going back to estoppel, that because the Town had taken so many affirmative actions that whatever he had there, whatever the Town approved was okay to continue forward as a pre-existing, nonconforming use. And I'll let Mike [Liguori] weigh in as to whether that was a good opinion or a bad opinion. But...
- Chairman McNulty: But truly not because in the [19]90s we had rules and regulations for that area.
- Rich Williams: We did but...
- Dede Lifgren: And none of it was approved though.
- Rich Williams: The approvals that were granted were all based on certain assumptions that were in correct, you know. So...
- Board Member Ladau: The approvals were given for two chairs...
- Chairman McNulty: That's by the Health Department.
- Dede Lifgren: By the Health Department.

Rich Williams: So then I went back and looked at what we did. Even our approvals, I believe, were based on two chairs. The parking was based on two chairs. So, you know, our approvals were basically for two chairs in there...

Chairman McNulty: And a residence. It was a mixed use.

Rich Williams: And the residence. And, you know, so now I was concerned this gentleman had come in and said, you know, he was going to continue to operate the five chairs that were in there. So, you know, I made it a point to go talk to Bob [McCarthy] about the situation. If it's going to change hands then there's probably going to be a municipal search. Or if they do come into see Bob about anything that when we do the municipal search it's going to go back... You know, we're going to review the file and it's going to go back as this is what you have. This is what was approved. Whether it's two chairs or three chairs, or whatever it is. So, and that's where we stand with this.

Chairman McNulty: So it's just working through the process at this point.

Rich Williams: Yeah. But, you know, at some point Bob's probably going to have to go out there and take a look at whether there's two chairs or six chairs. So, Mike, you want to...

Chairman McNulty: Now, say in this case... situation like that, determine it is two chairs, the people buy it. They proceed and they operate with two chairs. Now they're in. They're operating and six months down the line they throw in three more chairs.

Dede Lifgren: There already are all those chairs.

Chairman McNulty: No, but say...

Dede Lifgren: Oh, okay.

Chairman McNulty: they take them out.

Dede Lifgren: Oh.

Chairman McNulty: and they get in and they have two chairs. They're in, they're operating. Can we then go back? Because now they're in violation because we only approved two chairs, correct?

Rich Williams: Yeah, it depends on how the approvals are structured. You know...

Chairman McNulty: Sorry.

Rich Williams: If a building permit is given for a beauty parlor without defining what the permit is given for without having a plan, then we're, you know, without the ability to go back and enforce something different on that building permit. Same thing with site...

Dede Lifgren: There was no building permit.

Rich Williams: Well, I'm just saying...

Dede Lifgren: Oh.

- Rich Williams: We're talking hypotheticals here.
- Dede Lifgren: Okay, sorry.
- Rich Williams: Same thing with site plan. You know, if we issue site plan approval for a use for as a beauty parlor without defining...
- Chairman McNulty: How many parking spaces.
- Rich Williams: the number of chairs or the number of parking spaces, then we can't go back and enforce it. You know, we should do our due diligence and we should be thorough in what we are approving, always.
- Chairman McNulty: Well, that was obvious tonight with the Wilkinson [Referring to Wilkins].
- Board Member Taylor: Mmhmm.
- Rich Williams: Well, Wilkinson...
- Mike Liguori: We see this a lot, just on a...I see this all the time, you know, representing people buying and selling houses, right. You have the original sellers from 1964...
- Chairman McNulty: Yeah.
- Mike Liguori: and they get a municipal...You know, we put the house on the market. We send out contracts. We find a buyer. Send out contracts. And you send them your survey, your title report from way back when. A copy of your Certificate of Occupancy for a single-family residence. And then the buyers do a, you know, a title search and a municipal search, and it comes back and it says violation, you know, finished basement. Violation, fireplace. Violation, this. Violation, that. Deck. And the guy say this was all there in 1964 when I got my...when I bought my house. And here's my Certificate of Occupancy. Well, you look at a C.O. issued in 1964 and then you issue...look at a C.O. that's issued in 2015. It said kitchen: 14x14. Three bedrooms. Finished Basement. Deck: 14x14. Hot tub. Cement patio. You know, you're...
- Chairman McNulty: It gives a full account.
- Board Member Brady: Very specific.
- Chairman McNulty: Yeah.
- Mike Liguori: Yeah. And that's...That's where it needs to be.
- Chairman McNulty: Yeah, so...
- Mike Liguori: Well, if Bob knows...
- Chairman McNulty: Dede what...
- Mike Liguori: Bob...

Chairman McNulty: It's a...

Mike Liguori: No, no. It's a (inaudible – too many talking).

Chairman McNulty: the gears of the Town have to be working and, you know...

Dede Lifgren: I'm just...I want them to work...

Chairman McNulty: we have Bob McCarthy...

Mike Liguori: Yeah. No, no, no. We're...Now we're on notice and...

Chairman McNulty: It's shaping up....

Dede Lifgren: I feel like...

Mike Liguori: Bob's on notice.

Dede Lifgren: I'm repeating this again, I mean we really got screwed. We bought the property thinking there's two residences in front. Suddenly we have two commercial buildings there and of course we have cooking all day long. We even have MTBE in our water from the gas station. I mean, our property has been devalued and we can't do anything about it. So, at least I'm coming to you, hopefully, that this building won't, you know, we won't get chemicals in our water and hope...

Chairman McNulty: Sure.

Dede Lifgren: something...

Chairman McNulty: And hopefully it feels good at least to vent.

Dede Lifgren: I appreciate that.

Chairman McNulty: We don't mind listening.

Dede Lifgren: Thank you. I appreciate it.

Chairman McNulty: So, I'll guess we'll keep an eye out for that one if it comes down the line.

### c) Minutes

Chairman McNulty: Okay. Next we have on the agenda, we have minutes from December 4, 2014. Has everybody had a chance to look at those? I make a motion to approve those minutes: December 4, 2014.

Board Member Taylor: Second.

Chairman McNulty: All in favor. *Motion carried by a vote of 4 to 0.*

**d) Patterson Fire Department**

Chairman McNulty: And just a couple things. I see the Patterson Fire Department's back going to the Zoning Board. I saw a letter that you wrote, Rich.

Rich Williams: I did write a letter.

Chairman McNulty: You don't know if they're going. They haven't applied yet.

Rich Williams: You know what, I actually don't know if they've actually made the application. I know they have to go back to the Town Board and get the fees waived again. I've got to check; there's a lot going on.

The Secretary: I don't think they've made application yet.

Rich Williams: We don't.

The Secretary: Right.

Rich Williams: No.

Chairman McNulty: Okay.

Mike Liguori: Are they going in on a sign or...

Rich Williams: Huh?

Mike Liguori: I thought you...Is this on the sign or is it something different.

Rich Williams: No, this is the sign.

Chairman McNulty: This is the sign. Because...

Mike Liguori: I thought...

Chairman McNulty: There's a number of issues there and reading the letter I read from the Planner, I think...A difficult fight through the Zoning Board. It's going to be quite an argument.

Mike Liguori: I thought...I thought at the, not the very last Town Board meeting but the one before, I thought they had sufficiently understood that all they really needed to do was go to the Assessor and merge that lot. Did they decide that they're not going to?

Chairman McNulty: Well, that's one idea.

Rich Williams: Well, there's another way to skin that cat because...

Chairman McNulty: Good night.

Ted Kozlowski: Good night.

Dede Lifgren: Thank you all.

Ted Kozlowski: Good night, Dede.

Rich Williams: The fire department is reluctant to merge the lots. They want guarantees they're going to get the approvals before they merge the lot.

Mike Liguori: The approval to merge or the approval to subdivide in the future.

Chairman McNulty: The sign.

Rich Williams: The...

The Secretary: For the sign.

Rich Williams: To get the sign.

Mike Liguori: Oh, oh, oh. Oh.

Rich Williams: Alright, so...

Mike Liguori: Yeah, but that could be a condition of a sign permit.

Rich Williams: Well, that's what I did.

Mike Liguori: Yeah, okay. Got you. Yeah.

Rich Williams: Is I said...I said alright, fine. Go to the ZBA and don't apply for the use variance but understand that as a condition of the area variance you're going to be required to merge the lots.

Mike Liguori: Right. Right.

Rich Williams: Okay. So, that's where we left it.

Mike Liguori: Did the right...

Board Member Brady: You know, just last month you see "Xmas Trees" on a portable sign they had there. That's what's going to wind up out there. That's...

Ted Kozlowski: Right. Carnival.

Mike Liguori: Rich, did the right person say okay?

Chairman McNulty: Okay, I just wanted to...I saw...

Rich Williams: Yeah.

Chairman McNulty: the letter. I wanted to bring it up.

Chairman McNulty: And then the other...

Rich Williams: But they haven't...This was weeks ago and they haven't made the application yet.

Mike Liguori: Yeah.

Chairman McNulty: Rich, the other letter I saw was on the Patterson Deli and Heritage Furniture. They had a deadline on a code violation for their sheds.

Rich Williams: Yeah.

Chairman McNulty: Was anything heard back for this...They...was asked to be in front of the Planning Board...

Rich Williams: Not in my office.

Chairman McNulty: And we didn't see them. And so they hadn't responded at all.

Rich Williams: No.

Chairman McNulty: So that's all in the Code Enforcement's hands.

Rich Williams: Yeah.

Chairman McNulty: Okay. Anybody else have any comments.

Board Member Taylor: Well, I just had a question. I noticed the liquor store that we approved the sign for has a big for sale sign out front.

Chairman McNulty: I think that's been on it.

Board Member Taylor: That's an old one?

Chairman McNulty: Is it red and white?

Board Member Taylor: I don't remember the color.

Mike Liguori: It doesn't say "Liquor for sale"?

Board Member Taylor: I was just surprised when I went by.  
[Laughter].

Rich Williams: I think it's the old one as well.

Chairman McNulty: Yeah. The old sign has been on there.

Ron Gainer: I saw a sign...

Rich Williams: they've run into a huge roadblock.

Board Member Brady: Yeah.

Chairman McNulty: Ted, do you have anything for us?

Ted Kozlowski: No. What's the roadblock?

Rich Williams: DEP basically came back and said...

Board Member Taylor: No.

Rich Williams: our determination is you have not been operating the building for more than a year. You no longer have a valid septic system.

Chairman McNulty: Oh, really?

Board Member Taylor: Oh.

Rich Williams: Yeah. They said they could...And they're entirely in the DEC buffer. So there's nothing they can do about this. But DEC basically said resubmit...

Chairman McNulty: DEC or DEP?

Rich Williams: DEP. DEP basically said resubmit plans that fully comply with our, you know, regulatory requirements for a septic system.

Chairman McNulty: And will they...

Rich Williams: They can't do it.

Chairman McNulty: They can't do it.

Rich Williams: No.

Chairman McNulty: They won't waive or anything, huh?

Rich Williams: Well, they've got a variance process. But it's a nightmare to go through the variance process especially if they don't want you to be there.

Ron Gainer: Right.

Mike Liguori: If you're not the original owner, you're not getting a variance.

Chairman McNulty: And the Health Department has no way to...

Rich Williams: No.

Mike Liguori: No.

Board Member Taylor: No. It's wetland.

Chairman McNulty: DEP's the final say.

Mike Liguori: Well actually, the Health Department is really the final say. And they could...I have been...I've experienced this once where our...The Putnam County Health Department has issued a permit and the DEP has denied it. DEP has denied their...the issuance. They've recommended that the Health Department not issue the permit and the Health Department has issued the permit anyway.

Chairman McNulty: And was the applicant able to continue?

Mike Liguori: because they have a Putnam County Health Department permit to continue. But, you know, the politics really need to be there for that to happen.

Chairman McNulty: Wow.

Mike Liguori: So, good luck. And if you don't get your variance from the DEP...I've gotten variances but they have to...the applications have to come from...The two variances I've been able to get are from land owners that have owned their property prior to the enactment of the watershed regulations. So...

Chairman McNulty: Wow, that's tough.

Mike Liguori: Yeah, it is. It is. It definitely is. You might as well just rip up the pavement and put the grass seed down.

Rich Williams: I can tell you this, they came to us and asked us to tie the A&P in because their septic has failed and we said okay. And they said okay now go get a variance.

Mike Liguori: Oh, yeah. Yeah, that's right.

Rich Williams: So we said okay. And we gave them all the documentation they requested to demonstrate that the plant was underutilized and had more than enough capacity. And they came back at us and said, oh that's fine. Now go analyze every individual component of your wastewater treatment plant to make sure that each component would have enough capacity. And they asked us.

Board Member Brady: Yeah, you'd think that they'd be helpful.

Chairman McNulty: Oh, man.

Rich Williams: Yeah, that's...

Board Member Brady: One hand doesn't know what the other hand's doing.

Rich Williams: No.

Chairman McNulty: But let's put a wastewater treatment plant on the brook on the top of the hill.

Mike Liguori: No, they just like to talk out of both sides of their mouth.

Ted Kozlowski: Yeah. Yeah.

Chairman McNulty: DEP.

Ted Kozlowski: That's okay.

Chairman McNulty: I'll make a motion to adjourn on that happy note.

Board Member Brady: I second.

Chairman McNulty: All in favor. *Motion carried by a vote of 4 to 0.*

Meeting was adjourned at 8:35 p.m.